cents. It'll be even greater at closing time today.

STATE DEPARTMENT'S REFORM IS HISTORIC OPPORTUNITY

Mr. HELMS. Mr. President, the majority leader announced today his intentions to bring S. 908, the State Department Authorization Bill, to the Senate floor before the August recess.

As my colleagues are well aware, this bill proposes to reorganize the agencies of the executive branch charged with the conduct of America's foreign policy, saving needed Federal tax dollars in the process.

Before my colleagues rush to judgment on the efforts to restructure the State Department, I recommend they read John Bolton's June 25 op-ed piece in the Washington Times, ''Quest for a Stronger Foreign Policy Hand.''

Mr. President, John Bolton writes with authority on the purpose and past performance of the State Department because of his having served as Assistant Administrator of the Agency for International Development in the Reagan administration and as assistant Secretary of State in the Bush administration. Currently, John Bolton serves as the president of the National Policy Forum.

I urge Senators to take note of John Bolton's counsel. His advice regarding strengthening America's foreign policy hand is both sound and sorely needed.

Mr. President, I ask unanimous consent that the June 25 op-ed piece in the Washington Times, ''Quest for a Stronger Foreign Policy Hand'', be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, June 25, 1995]

QUEST FOR A STRONGER FOREIGN POLICY HAND

(By John Bolton)

The House of Representatives has just adopted sweeping organizational changes in formulating American foreign policy. The Clinton administration has argued that the restructuring under debate—merging the Agency for International Development, the U.S. Information Agency and the Arms Control and Disarmament Agency into the State Department—are isolationist and unnecessary. Comparable legislation is now pending in the Senate.

Lost in the swirling and sometimes confusing arguments about reorganization is the principal point: How to strengthen the hand of the president in the conduct of foreign policy. Constitutionally, only the president can and should speak authoritatively for the United States in international matters.

The paramountcy of executive branch leadership in these affairs, however, has been repeatedly compromised by splitting, again and again, the president's authority among a multiplicity of agencies. Each agency develops its own ''mission,'' its own political constituencies, and its own set of priorities, many or all of which may have little or no congruence with the wishes of the sitting president. The result, too often, has been interagency disagreements that retard if not entirely paralyze effective decision-making and policy implementation.

Over the years, therefore, the president's has been weakened, and his ability to act firmly and decisively hampered. Now, in the early days of a post-Cold War era, it is precisely the right time to sweep away the bureaucratic remnants of the past, and the ossified ''old thinking'' they have come to embody. It is simply wrong to argue that the proponents of change are attempting to shift power between the branches. To the contrary, the proposals are intended to enhance presidential authority within his own often-unruly family.

Advocates of USIA's continued independence, for example, argue that its news and other functions should remain rigorously independent from the tainting touch of foreign policy considerations. AID's defenders assert that providing foreign economic assistance should serve as a poverty program rather than a support for vital U.S. interests. ACDA's champions believe that only its separateness will protect the Holy Grail of arms control. In fact, the secret agenda in all three cases is to insulate the sub-Cabinet agencies from effective control by the secretary of state, for fear that their respective missions will be ''politicized.'' In this context, ''politicized'' means becoming consonant with U.S. national interests, which most Americans would simply take as a given, not as a problem.

Many who wish to preserve AID's separateness, such as Vice President Al Gore, do so because they support increased spending on international population control and environmental matters rather than fundamental economic policy reforms in developing countries. The vice president's preference for condoms and trees instead of markets notwithstanding, these policies will receive long-term political support in Congress only if they are tied to enhancing demonstrable U.S. foreign policy interests.

Changes in bureaucratic structures, however, do not require or even imply changes in budget levels or program priorities. Any such changes in these areas must stand or fall on their own merits, independently of which department or agency actually implements policies and programs. Disagreements on funding and program matters can be handled through the legislative amendment process, and will change over time in any event. Anyone who has actually served in the federal government knows that one of the few effective ways to capture the bureaucracy's attention is to threaten massive changes in its budget. Even so, efforts by opponents of reorganization to confuse structure and policy are simply obscurantist at best.

These are the tired arguments of inside-the-Beltway turf warriors. They deserve exactly as much weight as the voters gave to similar arguments on the domestic front in November. In fact, most breathtaking here is the opposition to reform agencies created up to 35 years ago, a pace that would imply roughly three bureaucratic reorganizations every century.

Nonetheless it is the centrality of enhancing the president's foreign policy authority that provides the inspiring vision to the reform proposals crafted by Rep. Benjamin Gilman, New York Republican, and Sens. Jesse Helms, North Carolina Republican, and Mitch McConnell, Kentucky Republican. Rising above the narrow political temptations occasioned by the split in control between democrats in the executive and Republicans in the legislative branches, they have crafted reorganization plans that transcend today's particular partisan wrangling. They have gained widespread support—including from distinguished career Foreign Service officers like former Secretary of State Larry Eagleberger. These may be sweeping proposals, but they are not extreme.

The reforms' directions, more-over, are decidedly internationalist in their implications. Reorganization opponents have repeatedly attempted to paint efforts to achieve sound policy-making and management as isolationist, but their ad hominem rhetoric is off the mark. By attempting to evoke dark memories of pre-World War II policies, they demonstrate that they are simply unable to appreciate why new international realities require new American structures.

It is precisely to make the United States more forceful, more dynamic and more adaptable that restructuring is so necessary. Thus, the real internationalists today in foreign affairs follow the lead of predecessors who were also not afraid of massive change in process and structure. Those internationalists who were ''present at the creation'' of U.S. policy and institutions in the aftermath of World War II would undoubtedly be cheerleaders for the reorganizations under discussion.

How the reorganizations are actually implemented and in what period of time they must be made operational are subjects for reasonable debate, as is the degree of flexibility the president and the secretary of state should be provided in reordering the combined agencies. Important as these questions may be, however, they are simply details in the larger vision of Messrs. Gilman, Helms and McConnell.

Moreover, no one should be confused that the proposals to fold USIA, AID and ACDA into the Department of State are preferred because of any illusion that the State Department is the unique repository of superior skill or efficiency. Phase two of the reorganization process should encompass a major re-examination of attitudinal, press and management issues within the department itself.

To step back now from the reform proposals out of timidity or indecision would be to miss an historic opportunity. Soon, the House of Representatives will complete consideration of the Gilman version of reorganization, where it deserves overwhelming approval, followed by immediate action by the Senate. What President Clinton ultimately does with the legislation when it reaches him will speak volumes about whether his ''reinventing government'' initiative is just one more disposable promise.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 343, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 1487, in the nature of a substitute.

Domenici amendment No. 1533 (to amendment No. 1487), to facilitate small business involvement in the regulatory development process.

Levin (for Glenn) amendment No. 1581 (to amendment No. 1487), in the nature of a substitute.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we are already in the second full week of this bill. It is an important bill and it does deserve the type of consideration that we have been giving to it, but we are, hopefully, coming to closure on it.

This is a very, very important bill to our society. I do not think there is anybody in this body that will not admit that our society is overregulated. In fact, some people think we are being regulated to death, that it will be the end of a great society, the end of the greatest country in the world if we keep going the way we are, if we have bureaucrats back here, who do not understand the problems out there, issuing ridiculous, silly regulations.

This bill is about common sense. It is putting common sense into the regulatory process. It does not mean doing away with regulations. This bill means we are going to have to use common sense in coming up with regulations. I think most Americans would agree the Federal Government is out of control, certainly in terms of the burdens that it places upon them and their small businesses in particular.

What this bill does is it requires governmental agencies to abide by rules and regulations that they issue that help rather than hurt our people. It will require the Federal bureaucracy to live by the same rules that Americans live by in their day-to-day lives.

Those rules are that the benefits of what you are telling people to do have to be justified by the costs of those benefits, the cost imposed because of the regulations.

The notion of common sense and accountability in rulemaking sounds like a radical idea inside the beltway, but it is really something people want outside the Washington beltway.

Americans are smothered, inundated. They are drowning in redtape in all aspects of their lives, and they are getting tired of it. They have asked us to get rid of the status quo and to get some reason into this system. This bill certainly does not mean the end of health concerns or safety concerns and it certainly does not mean the end of health and safety regulations. It just means they have to be regulations that make sense. They just cannot be imposed ad infinitum on top of American citizens without some justification for the regulations themselves.

We have seen on the floor of the Senate a lot of effort to maintain the status quo. That is at the same time that everybody prefaces their remarks with ''the status quo is unacceptable.'' The debate this week is going to determine whether we stick with the status quo or whether we do some things that will really help our country and resolve some of these difficulties. We simply have to get rid of the silly, ridiculous regulations.

In that regard, let me give you my top 10 list of silly regulations. This will be list No. 7. I might add that all of these are from Utah constituents this time, but they apply across the country. I think you will find some similarities in each and every one of our States.

Silly regulation No. 10: Requiring a company, if they spill just 1 pint of antifreeze, to call the Coast Guard in Washington, DC, to alert them. That is silly.

Silly regulation No. 9: Purposefully releasing more water from a dam to create a flood-stage flow in order to help endangered fish, regardless of the farmland that was flooded as a consequence.

Silly regulation No. 8: Requiring a person who is on a 6-foot scaffold to be tethered to a fall protection device which is also 6 feet high.

I cannot help laughing at some of these. Some are so bad. This is what our people go through out there. The problem is, if you think about it, that the person with that 6-foot tether would already hit the ground before the device could save him.

Silly regulation No. 7: Requiring a company to hire an outside contractor to check emissions, in spite of the fact the company does it themselves every 8 hours.

Silly regulation No. 6: Refusing to approve a plan to divert a portion of a flow of water for stock watering, in spite of the fact that it would drain into the same basin. Further, the Bureau of Land Management, U.S. Forest Service, State engineer and Utah Department of Water Resources all approve of the plan.

Silly regulation No. 5: Requiring buildings built after the asbestos ban took effect to be inspected for asbestos, despite the fact they contain no asbestos. That is just typical of what is happening all the time. These are specific cases, but it is typical to require stupid, idiotic things just because the people back here are not willing to do what is right or use common sense.

Silly regulation No. 4: Requiring a company to use only hand tools if they want to replace a concrete ditch with an underground pipeline, despite warnings that the ditch may fail. This spring, the ditch did fail and flooded the whole surrounding area.

Silly regulation No. 3: Requiring a contractor to pay a person $55 an hour to walk in front of a back hoe to look out for the desert tortoise. People in southern Utah are just beside themselves. Can you imagine paying a person $55 an hour to walk in front of a back hoe to look out for the desert tortoise? Well, I admit, desert tortoises are wonderful creatures that ought to be preserved, but there is a limit, it seems to me, to this type of stupid action.

Silly regulation No. 2: Diverting water to aid the ''Lady's Ute tress orchid,'' in spite of the fact that this will reduce the flow to a family farm with a decreed right to the water. No prior notice of the plan diversion was given to the family, nor were they made aware of the issuance of a wetlands permit for the plan.

I have to acknowledge that the Lady's Ute tress orchid, I am sure, is a beautiful flower, but I also think that that family farm is important, too. That just shows how ridiculous some of these rules and interpretations of the rules are.

Now let us turn to silly regulation No. 1: Requiring that a company submit a list to the fire department of all the ingredients in their fire proof bricks, sand, gravel, mortar, and steel. This semiannual report containing the list of the fire department of all of the ingredients of fire proof bricks, gravel, mortar and steel is about six inches thick. You wonder why people do not want to go into business today or put up with this. This is a perfectly good explanation why.

Well, to make a long story short, it is easy to see why Federal regulators—even the good ones—are held in disdain by our people out there. And there are good regulators, we know that. We know there is a need for good regulation. We know there is a need to have Washington operate in a careful fashion to protect health and safety and other things.

On the other hand, these types of interpretations of regulations and these types of regulations, I think, bring condemnation upon the people, on everybody, even those who are sincere and who do a good job.

Now, Mr. President, finally, I want to once again address the relative merits of S. 343 and the Glenn amendment. Last Friday, I stated that the Glenn amendment could be termed ''reg lite,'' because it was a somewhat weaker version of S. 291, which was itself a product of compromise and, for that reason, unanimously voted out of the Governmental Affairs Committee under my good friend, Senator BILL ROTH. I noted that Chairman ROTH explained that S. 343 is a superior vehicle for achieving meaningful and effective regulatory reform that neither S. 291 or the Glenn substitute does. I also critiqued in some detail the Glenn bill's provisions and concluded that S. 343 is a far more effective mechanism for regulatory reform—that is, if you really want to do something about regulatory reform.

Last Friday, a modified Glenn amendment was introduced. This is a little bit stronger and moves a little bit closer to the Dole-Johnston bill by adopting a little more of S. 343's reform measures. The gap is narrowing. We appear to be moving closer together. Nonetheless, while imitation is the sincerest form of flattery, my original conclusion remains the same: S. 343 is a far superior vehicle for regulatory reform.

Let me first say that the Dole-Johnston bill is not a bill that simply requires agencies to perform cost-benefit analysis or risk assessment. It is a comprehensive regulatory reform measure that, for the first time in

about a half century, reforms the Administrative Procedure Act.

These reforms, many of which were recommended by the Administrative Conference of the United States and the American Bar Association, are commonsense proposals that make the notice and comment requirements of the Administrative Procedure Act more productive. These reforms guarantee effective public participation in the promulgation of rules and assure that judicial review will be more effective. They provide fairness to the administrative process. And most are missing in the Glenn substitute.

More specifically, Dole-Johnston, amends section 553 of the Administrative Procedure Act by requiring, among other things, in the notice of proposed rulemaking in the rule's statement of basis and purpose:

First, a succinct explanation of the need for and specific objectives of the rule.

Second, a succinct explanation of the statutory basis for the rule, including whether the agency's interpretation is clearly required by the text of the statute and, if not, an explanation that the interpretation selected by the agency is within the range of permissible interpretations identified by the agency, and an explanation of why the interpretation selected by the agency is the preferred interpretation.

Third, a summary of the cost-benefit analysis required to be prepared pursuant to chapter 6 of this bill.

Fourth, a statement in the proposed stage of the rule that the agency will seek proposals from the public and local governments for alternative methods of accomplishing the objectives of the rulemaking.

Fifth, in the statement of basis and purpose, a discussion and response to any factual and legal issues raised by the comments to the proposed rule, including a description of all reasonable alternatives to the rule raised by the agency and the commenters, and the reason why such alternatives were rejected.

All of these statements and explanations must be part of the rulemaking file and, along with factual and methodological material supporting the basis of the rule, made available to the public for inspection and copy.

These requirements are absolutely essential for regulatory reform. They assure that the public has the needed information to cogently comment on—or challenge—the rule. They also assured that the courts have the needed information to effectively review the factual and legal underpinnings of the rule.

To be sure, without these requirements—and the requirements of section 622 that all reasonable alternatives facing the agency in rulemaking be identified—judicial review of cost-benefit analysis is effectively impossible.

How can there be review of whether cost justify benefits if all the relevant factors facing the agency are not fully disclosed? The absence of such requirements are a fatal weakness of the Glenn substitute.

I also want to point out that these requirements are hardly controversial. These rulemaking requirements were all endorsed by the American Bar Association, and the American Bar Association has correctly criticized the Glenn bill for not containing these needed reforms.

The fairness provisions of Dole-Johnston also constitute significant reformation of the administrative process. They include section 707, the reform of consent decree provision.

This section assures that consent decrees are not construed in such a way as to limit agency discretion to protect the rights of innocent third parties or to respond to changing circumstances. All too often, particularly in environmental enforcement actions, sweetheart consent decrees are entered into by agencies and special interest environmental groups that impinge on the rights of innocent third parties and implement the political agenda of those special interests. The Glenn bill contains no equivalent provision.

Section 708 is another one of these fairness provisions. This provision prevents impaling the regulated public on the horns of a dilemma. An affirmative defense is provided in any enforcement action where a regulated party faces compliance with contradictory or inconsistent regulations. Who can argue with this fairness provision? I guess the sponsors of the Glenn substitute can because it is, again, absent from their substitute, from their bill.

The sponsors of the Glenn bill are also AWOL in not including the final of these fairness provisions—section 709. This provision was originally in the Judiciary Committee version of S. 343 and was unanimously restored to the bill, 80 to 0, by amendment introduced by Senator HUTCHISON last Friday. It prevents the imposition of criminal penalties or civil fines in a situation where parties reasonably relied on a longstanding position of an agency, and the agency tries to retroactively enforce a new interpretation of law or policy. This administrative ex post facto provision is a codification of a fundamental precept of justice dating back to Magna Carta; yet, it is missing from the Glenn substitute.

Besides Administrative Procedure Act reform, the Glenn substitute does not contain certain critical elements of regulatory reform. Perhaps the most important missing element is Dole-Johnston's ''decisional criteria'' section 624. This section is the heart of Dole-Johnston and constitutes a far more sophisticated and efficacious approach to assuring the compliance with cost-benefit analysis and risk assessment requirements than does the Glenn approach.

First of all, this decisional criteria section mandates that no rule shall be promulgated unless the rule complies with this section—624. That requirement will act as a hammer to assure agency compliance with the standards set forth in the decisional criteria section 624 of S. 343.

Some will say this is overkill, that agencies will abide by cost-benefit standards without section 624's hammer. Yet, every President since President Ford, including President Ford, right up to the current President, President Clinton, have issued Executive orders on regulations. And President Clinton's Executive order on regulations contains a hammerless cost-benefit analysis requirement, which is why it is routinely ignored by all of his Federal agencies and OMB, the Office of Management and Budget.

According to an April 1995 study by the Institute for Regulatory Policy, of the 222 major EPA rules issued from April to September 1994, only six passed cost-benefit analysis muster.

The rest were promulgated anyway. So we see there is a need to assure agency compliance, because when they will not listen to their own President, or their own Presidents through the years, imagine how they will not listen to us if we do not go into a compliance process together.

Of the 510 regulatory actions published during this period, this period of April to September of 1994, 465 were not even reviewed by the Office of Management and Budget; and of the 45 rules that were reviewed, not one—not one, not a single one—was returned to the agency for having failed the obligatory cost-benefit analysis. They call this regulatory reform?

Moreover, section 624 not only requires, like the Glenn substitute, that ''benefits of the rule justify the costs of the rule,'' but unlike the Glenn substitute, it also requires that the rule must achieve the ''least cost alternative'' of any of the reasonable alternatives facing the agency, or if the ''public interest'' requires it, the lowest cost alternative taking into consideration scientific or economic uncertainty or unquantifiable benefits.

Now, this does two things. No. 1, it assures that the least burdensome rule will be promulgated; No. 2, that agencies are not straitjacketed, when facing scientific or economic uncertainties or benefits that cannot be quantified, into promulgating a rule based on an option that is only the least costly in the short-term. In the latter situation, agencies may explicitly take these factors into account when considering the least cost alternative when promulgating a rule.

What about the effect on existing law? Section 624 of 343 provides that its cost-benefit decisional criteria ''supplement'' the decisional criteria for rulemaking applicable under the statute granting the rulemaking authority.

This supplement requirement is applicable except when an underlying statute mandates that a rule to protect health, safety, or the environment be

promulgated, and the agency rule cannot, applying in the standard in the text of the statute, satisfy the cost-benefit criteria of section 624.

In such a case, the agency taking action may promulgate the rule but must choose the regulatory alternative meeting the requirements of the underlying statute that imposes the lowest cost. In this way, agencies are given great latitude in promulgating cost-effective rules. Thus, S. 343 strongly supplements existing law but does not embody a supermandate.

This was made absolutely clear in a bipartisan amendment adopted last week. In contrast, the Glenn amendment only requires agencies to justify costs in those situations where such requirement is not expressly or implicitly ''inconsistent with'' the underlying statute. This allows agencies to select any costly or burdensome option allowable under the underlying statute.

What about judicial review? Could it not be argued that while Glenn does not contain a decisional criteria section, forcing agencies to abide by cost-benefit analysis and risk assessment criteria, its judicial review provision assures that agencies will comply with that bill's albeit weak cost-benefit analysis requirement. The answer is, unfortunately, no.

While both S. 343 and the Glenn bill basically only allow for administrative procedure action ''arbitrary and capricious'' review of the final, and not independent review of a cost-benefit analysis and a risk assessment, the Glenn judicial review section contains a provision that perhaps inadvertently could be construed to prohibit a court from considering a faulty cost-benefit analysis or risk assessment in determining if a rule passes arbitrary and capricious muster.

That provision expressly states that ''if an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conform to the particular requirements of this chapter.''

This means that a poorly or sloppily done cost-benefit analysis or risk assessment could avoid judicial scrutiny even if material to the outcome of a rule, because the Glenn judicial review section literally states that the bill's ''requirements'' for analysis and assessment are not reviewable.

Now, that is serious. That is a critical difference on the judicial review aspects of these two approaches, S. 343 and the Glenn substitute amendment.

Another significant reform contained in S. 343 but missing in the Glenn bill is the petition process. While critics of S. 343 contend that the bill's petition processes are too many and overlapping, I believe that the bill's petition provisions are workable, not at all burdensome, and empower that part of the American public affected by existing burdensome regulations to challenge rules that have not been subject to S. 343's cost-benefit analysis and risk assessment requirements.

For instance, in section 623, the requirement for agency review of existing rules, the petition provision allows for either placing the rule on the agency schedule for review, or in effect to accelerate agency review of rules already on the agency's schedule for review. The petitioner has a significant burden to justify that the requested relief is necessary. I might add that this provision was a product of negotiations between Senators KERRY, LEVIN, BIDEN, JOHNSTON, ROTH, NICKLES, MURKOWSKI, BOND, DOLE, and myself.

One other petition provision that I want to mention is section 629, which allows for the petitioner to seek an alternative means to comply with the requirements of a rule. This allows for needed flexibility that will save industry untold amounts of money and having to comply with sometimes irrational requirements, without weakening the protection of health, safety, or the environment.

In this way, agencies are given great latitude in promulgating cost-effective rules. In this way, agencies can do a better job.

Moreover, the following provisions of S. 343 are much better than their counterpart provisions in Senator GLENN's.

Risk assessment provisions: S. 343 applies its risk assessment and risk characterization principles to all agency major rules. The Glenn amendment, by sharp contrast, limits even the applicability of the risk assessment and risk characterization principles to major rules promulgated by certain listed agencies and it contains no decisional requirements for risk assessments.

Emergency provisions: The Dole-Johnston bill contains exemptions for imposition of the notice and comment, cost-benefit analysis, and risk assessment requirements. When an emergency arises where a threat to public health and safety arises, these provisions would allow for a rule that addresses these concerns to promptly go into effect. There is absolutely no delay. The government can protect our health and safety in all of these cases, including the red herring of E. coli. The Glenn substitute, on the other hand, only contains one exemption, and that is for risk assessments.

As I pointed out last Friday, this contains an element of irony. The supporters of the Glenn measure have complained endlessly how S. 343 would prevent the agencies from protecting the public from E. coli bacteria present in bad meat, or cryptosporidium in drinking water, and have screamed that rules addressing these problems be exempt from S. 343.

Of course, S. 343's emergency provisions adequately deal with the problem. But Glenn does not. There is not even similar language.

Where are the equivalent provisions in the Glenn substitute? Does the Glenn substitute exempt these types of rules from cost-benefit analysis? No. It is apparent, Mr. President, that the Dole-Johnston measure is a superior vehicle for regulatory reform. I ask my colleagues to vote against the Glenn ''reg lite'' bill and support the real thing. I yield the floor.

The PRESIDING OFFICER (Mr. JEFFORDS). The Senator from Ohio.

Mr. GLENN. Mr. President, last week I took the floor to reply to some of the top 10 silly regulations that the Senator from Utah had brought up last week. We found, upon investigation, that of some of those silly regulations last week there were, probably a good half of them, I do not know the exact number, but probably half of them I gave responses to that showed that the so-called silly regulations were not regulations at all and were, in some cases, municipal or State regulations that were being somehow tossed over into the Federal bailiwick of responsibility. And I gave real details on that, and it caused considerable concern on the other side of the aisle, I understand.

I do not know the regulations that were cited this morning, how they originated or what their backgrounds are, but I hope we have better substantiation for the ones given this morning than we did for the ones last week. If we wish to take up our time here going through those, we can do that again like the ones that were put in last week. But we found in many of the cases mentioned they were not Federal regulations at all. There was no requirement in Federal law for some of the things that Federal regulators were being credited with doing.

So what we are trying to do is bring some common sense to this regulatory process. I have said many times during this debate, regulatory reform is probably the most important issue we will take up this year, outside of the actual appropriations bills, because it affects every person in this Chamber today, whether on the floor, in the gallery, every person outside, every man, woman, child, every business, every organization across the whole United States of America. So regulatory reform is one of the most important items.

The American people want regulatory reform. I want regulatory reform. I believe the vast majority of Members of Congress do. I do not know of anybody who does not want regulatory reform. When we go back to our States, the horror stories we hear every time are about some of the rules and regulations that are too heavy-handed and too intrusive, so we need to correct those things. The question is, how will we correct them? If we are drowning in red tape, how do we correct it?

I have made no effort to retain the status quo, in spite of what was said this morning. Quite the opposite. I do not want to retain the status quo. That is the reason why we worked 2½ years on the Governmental Affairs Committee to try to get responsible regulatory reform legislation ready. We have

heard a lot of talk about specific instances of regulatory excess. And, as I have pointed out, many of these stories are just factually not true. But even for those that may be true, let us make sure that the medicine we prescribe is not worse than the illness we want to cure. Individual instances of excess do not justify bogging down our Government with equally excessive bureaucratic procedures and litigation, and that is what I fear the proponents of S. 343 are giving us.

Instead of making Government more cumbersome, more bureaucratic, and more expensive, we should be working to make the regulatory process more effective, more efficient, and less burdensome. Regardless of our debates about process, about how Federal agencies should make decisions, we must not forget what the process is all about. The regulatory process is about protecting the public interest. It is about implementing the laws that we in Congress pass. It is about providing for the common good, protecting public health and safety, preserving the environment, and making this country a land of opportunity for all and, at the same time, correcting regulatory excesses to make sure that those just do not happen. That is a balance. It is a balance that we have to seek and it is a balance that I think we have addressed in S. 1001, which was laid down last Friday afternoon.

That is why, as we debate how to reform the regulatory process, we must ask ourselves two essential questions—basically what I stated a moment ago. First, does the bill before us provide for reasonable and appropriate changes to regulatory procedures to eliminate unnecessary burdens on businesses and individuals and organizations and everyone all over this country? And, second, does the bill maintain our ability to protect the environment and the health and the safety of our people? In other words, does the legislation strike an appropriate balance? That is what we have to find in this debate—is the balance.

If we find the proper balance, there will be broad support for this effort. However, if we produce a bill that relieves regulatory burdens but threatens protections for the American people in health and in safety or the environment, the legislation should be opposed.

Today we will focus our debate on two bills, the Dole-Johnston substitute and the Glenn-Chafee substitute to that substitute. Both will transform the regulatory process, but I am convinced that the Dole-Johnston substitute goes too far. I believe that only the Glenn-Chafee substitute will reform the regulatory process in a way that meets my tests just outlined. The Glenn-Chafee bill will relieve burdens and maintain an efficient and effective process to protect public health and safety and the environment.

Before I discuss the differences between the two bills, I want to review the debate of last week, because I believe that this past week's debate alone, just standing by itself, makes the case for the Glenn-Chafee substitute.

Proponents of the Dole-Johnston substitute have repeatedly stated that their bill is a good bill, that their bill went through a long process of improvement before coming to the floor, and that it is ready for enactment. But I believe our activities on the Senate floor last week proved otherwise. When confronted with the challenge that their bill would threaten important health and safety rules—impending rules, now, not just something thought about for the future, but important pending health and safety rules such as those for food safety, drinking water, mammograms—the proponents of Dole-Johnston first denied that their bill would compromise those regulations. Then they tried to add general and symbolic exemptions just in case, like the sense-of-the-Senate resolution that was supposed to be a substitute for the Boxer amendment protecting mammogram rules. But when all the votes were done, we see that they voted against meat and poultry inspection rules, putting the American people at risk due to the dangers of E. coli and other foodborne diseases; and that they voted against drinking water safety rules. But we see that they voted for mammogram rules and for child poisoning protection rules.

I do not think my colleagues value food and drinking water safety less than women's or children's health. What I really think is that the proponents of the Dole-Johnston bill have yet to come to terms with the fact that their bill fails my test. It may reduce regulatory burdens—it will do that—but it will also jeopardize public health and safety and the environment. In other words, it does not hit the balance that I spoke about earlier.

They say their bill will not harm the public but they are not really sure. I am sure that the Glenn-Chafee substitute will protect the public and reduce regulatory burdens, and I say we should support that Glenn-Chafee substitute.

When it came time last week to discuss the effect of their bill on the implementation of current laws, again we saw confusion and uncertainty. Throughout the negotiations, prior to coming to the floor, and during the first hours of debate, the proponents again and again denied that their bill contained a supermandate—that is, a prevision that would have economic cost-benefit analyses override other statutory requirements if there was any conflict between the two.

Those other statutory requirements are things like clean air, clean water, and worker safety. Even so, they refused to add language to clearly state that assertion, that in a case of a conflict between the cost-benefit test and the statutory requirement, the underlying statute would prevail. In other words, there would not be a supermandate that said: If there is a conflict, that the earlier law would be knocked out. Their provision would have provided that, if there was a conflict between the rule that came up and a previous law passed by the Congress, signed by the President, and in effect all over this country, the underlying statute could be knocked out by a regulation.

Finally, on the floor an amendment appears from the proponents to do just that, to say that if there is a conflict between the cost-benefit test and the statutory requirement, that the underlying statute would prevail. Again, I have to ask why was the Dole-Johnston bill brought to the floor in the form it was? The proponents insisted it was in fine shape and provided just the right amount of reform, but when pressed on the floor, their arguments went both ways and the weaknesses of the bill, their bill, were revealed.

When it came time to discuss what their bill covers, again we saw confusion and inconsistency. Their bill provided the proper threshold, they said—a major rule should be a rule with an annual effect of $50 million or more. On Monday, the first day of debate, that threshold was, however, lowered even further with the addition of significant, what are called significant rules, under the Regulatory Flexibility Act. This will add between 500 and 800 rules to the agency cost-benefit process. This was an incredible expansion of coverage. It could quadruple the number of rules that agencies have to put through detailed analysis.

The very next day an amendment was passed, which I supported, to raise the threshold from the $50 million figure to $100 million. But the problem is that the amendments are inconsistent. It makes no sense to say that we have restricted the scope of the bill to a more reasonable threshold—$100 million overall economic impact on the country—when the threshold at the same time had just been lowered to include hundreds and hundreds and hundreds of more rules.

I simply do not understand how my colleagues can think that agencies in a time of falling budgets and full-time employees—FTE's—will be able to effectively perform the duties that we give them. Yes, you have to remember that we in Congress passed the laws that require agency action. I add that some 80 percent of the regulations written are required in the laws that we sent over to the agencies to have the regulations written.

Now those agencies will have to spend scarce resources on analyzing rules that do not have a significant impact on the Nation as a whole. This is simply a mistake. They cannot do something with nothing. We are cutting their budgets with fewer full-time employees and at same time loading them up with new policies that must be done, new analyses—that I favor but not the expansion that was done on the

floor—in the numbers of overall reviews that have to be made. We need to stick with the higher threshold, and that is it. That is manageable.

Agencies need to be more sensitive to the burdens that Government places on small business. I also add that is what the Regulatory Flexibility Act is all about. Thinking that businesses somehow are being overregulated is not something new. We passed the Regulatory Flexibility Act I believe back in 1972 or 1973. It was supposed to address some of this problem.

Let me repeat that agencies need to be more sensitive to the burdens that Government places on small business. That is what the Regulatory Flexibility Act is all about. But requiring agencies to go through lengthy analyses for nearly every rule that comes under that act is just too much. We will end up with a Government that spends more money and more time, and has less and less to show for it.

If the proponents of Dole-Johnston are trying to make it much harder to issue regulations, regulations that we in Congress often require—require as much as 80 percent of the time—then this is the way to do it. If they want to make it harder to issue rules that protect the health and safety of the American people, this is the way to do it.

Let me just observe that two major supporters of the Dole-Johnston substitute, Senator JOHNSTON and Senator ROTH, did not support the expansion of the bill to cover regulatory flexibility rules. So I hope we can still address this problem in a reasonable way and maybe work out something on that before we come to a final vote on this legislation.

Finally, let me mention the issue of sunshine. On Thursday, my amendment to the Dole-Johnston substitute to provide for sunshine in the OMB regulatory review process was accepted. I was very happy that amendment was accepted. It was not just passed by a vote. It was accepted unanimously. That was very good because it shows support for an important component of reasonable regulatory reform. This sunshine provision came from the bipartisan Governmental Affairs Committee bill, the bill sponsored by my good friend from Delaware, Senator ROTH. The provision is also contained in the Glenn-Chafee bill.

The problem is that for the last 2 months we have repeatedly urged those Senators involved in crafting the Dole-Johnston substitute to incorporate that sunshine provision. Despite our requests we were turned down at every turn. The latest rejection came last Wednesday, July 12, when we finally got a response to our June 28 list of 9 major and 23 minor issues with the Dole-Johnston bill. We were told then that we would have an answer. We do not have a full answer yet. But we did get a response to our June 28 list of 9 major and 23 minor issues with the Dole-Johnston bill. But then the next day, on Thursday, July 13, when confronted with the sunshine provision as an actual amendment, suddenly it was fine. Suddenly it was acceptable.

I have a lot of respect for the intelligence and good faith and legislative abilities of the proponents of the Dole-Johnston substitute. I must admit I do not understand the thinking that goes into developing a legislative proposal of such great complexity and far reaching impact in a closed room dismissing compromise proposals out of hand and insisting that the bill should be passed, and then on the floor accepting some of the very proposals that were earlier rejected all the while maintaining that no changes are needed.

I have not changed the stand I took, along with Senator ROTH and our other colleagues in the Governmental Affairs Committee 3 months ago. I believe we had a tough but workable regulatory reform bill in S. 291. That bill provides the basis for the Glenn-Chafee substitute that I think should be supported now. So my position has not changed. Of course, there is always room for improvement in any bill. We modified Glenn-Chafee to reflect improvements that we have seen over the last several weeks. But on the basic provisions of the bill, my position is clear. It has been consistent.

With the proponents of the Dole-Johnston substitute I think the story is different. I believe the truth is they are finally realizing that their bill is flawed, weighted with ill-thought-through provisions that will frustrate the very reform that they say they want to accomplish.

I believe my colleague from Louisiana, Senator JOHNSTON, has accomplished significant changes in S. 343 in the month or so that he has been working with the majority leader and the Senator from Utah, Senator HATCH. I also believe Senator JOHNSTON deserves a great deal of credit for his commitment to regulatory reform, and for his tireless efforts to improve S. 343. He has been involved in regulatory reform for a number of years, and that has had pieces of legislation passed here on the Senate floor before. But if nothing else, his constant presence on the floor over the last week, and the detailed personal knowledge he has of the bill, shows his commitment and expertise. I certainly commend him for his effort. I believe the product, though, is still flawed, too unwieldy, too unworkable to provide the reform that we all believe is necessary and needed for the regulatory process. I think last week's debate highlighted a number of these differences.

To bring the debate to the present, I would like to describe the major differences that I see between the Dole-Johnston bill, as modified this past Friday, and the Glenn-Chafee substitute.

The Dole-Johnston substitute is based on the Judiciary Committee's bill that emerged from a divisive committee proceeding that was cut short before the bill could be fully debated. The Glenn-Chafee substitute is based on the Governmental Affairs Committee's unanimous bipartisan legislation. S. 291 which was sponsored by Senator ROTH, the chairman of our committee, and fully debated in committee. Nothing was cut short there. It was fully debated before it was voted out with eight Republican votes and seven Democrat votes. It was a unanimous committee vote.

An examination of the two committee reports shows the differences between those two bills. The Governmental Affairs report had a unanimous bipartisan discussion of a tough but workable approach to regulatory reform. The Judiciary report is divided and filled with divergent views, and they have never been reconciled yet.

I believe that these two reports tell us why we are in the posture we are in today. Instead of choosing the path of bipartisan dialog and cooperation, the proponents of S. 343 chose to push ahead with what I view as an extreme bill. All the effort of Senator JOHNSTON to moderate that bill—and again he has accomplished much—has not altered the fundamental nature of that bill. As I have said previously during this debate, the result is a bill tailored to special interests, and is a lawyer's dream. It does not, in my view, meet the goals of at the same time protecting health and safety or of having a more effective and efficient Government.

Yes, we want agencies to have more thoughtful and less burdensome rules, but we also want agencies to be effective. The American public does not want the Federal Government to be more inefficient or to have important public protections delayed or bogged down in red tape, delay and courtroom argument. That is why Senator CHAFEE, myself and several others offered an alternative bill just before the last recess, and it was laid down here before the Senate last Friday as a substitute.

Our substitute bill, S. 1001, is based on that same Governmental Affairs Committee bill, S. 291, that was reported out with full bipartisan support. It provides for tough but fair reform. It will require agencies to do cost-benefit analyses and risk assessments, but it will not tie up all their resources unnecessarily. It does not provide for special interest fixes, and it does not create a lawyer's dream. It provides for reasonable, fair, and tough reform.

Since introducing the bill, we have incorporated additional changes to reflect agreed upon improvements arrived at during negotiations and debate on the underlying bill.

This is a very complex matter. We do not necessarily claim we have the very last word on every detail, and we look forward to suggestions for improvement. We do think our approach is much more workable than the Dole-Johnston substitute and that our substitute provides the better approach for reform.

Now, that is a little bit on the background, and that brings us to today. After a week of debate and amendments as well as the negotiations that preceded floor action, the Dole-Johnston substitute has been modified in a number of ways. There are, however, major issues that still distinguish the two bills and recommend support for the Glenn-Chafee substitute.

In my mind, there are five major areas of difference remaining. First is the issue of how agencies should use regulatory analysis. We believe that agencies should be required to perform risk assessments and cost-benefit analyses for all major rules. These analyses should inform agency decisionmaking —inform agency decisionmaking. They should not unilaterally control those decisions and impose least-cost solutions to every problem. Let us put some common sense into this process. We should not unilaterally control those decisions and impose least-cost solutions to every problem.

Second is the question of look back. We believe that agencies should review existing rules, those that have been in effect, some for a long time, but their reviews should not be dictated by special interests or lead to wasteful litigation.

Third is a matter of judicial review. The courts should be used to ensure that final agency rules are based on adequate analysis. Regulatory reform should not be a lawyer's dream with unending ways for special interests to bog down agencies in litigation.

Fourth is the concern about special interests. Regulatory reform should provide a new, across-the-board process for Federal agency decisionmaking. It should not provide program fixes for special interests.

Fifth is the implementation of the new reforms. In a nutshell, this is the issue of effective date. More broadly, however, it involves the question of whether we want to implement reforms in a way that improves Government decisions or whether we want to impose new requirements in order to frustrate decisions, create more delay, waste resources, introduce uncertainty and open up new avenues for litigation. I believe that implementation of the Glenn-Chafee substitute will improve decisionmaking and reduce burdens on the American public. The Dole-Johnston substitute, on the other hand, has the potential to create problems, cost money, and harm the public interest.

If we could resolve these five sets of issues, we could establish for the first time a governmentwide comprehensive regulatory reform process. This process would produce better, less burdensome and fewer regulations. It would also provide the protections for the public interest that the American people demand of their Government and that they have a right to expect from their Government.

S. 343 does not follow these principles. Instead, it does special favors for a special few. In so doing, it creates a process that will delay important decisions, waste taxpayer dollars, enrich lawyers and lobbyists, undermine protections for health, safety, and the environment and further erode public confidence in government.

Now, let me talk about each one of these five major issue areas. The first issue is the question of the use of regulatory analysis. We believe that agencies should perform risk assessment and cost-benefit analyses for all major rules. As I have already said, the threshold for a major rule should be a $100 million economic impact. If it includes more rules, as the Dole-Johnston substitute now does, it will fail its own cost-benefit test, and we will just waste Government resources instead of reforming Government. Once undertaken, the cost-benefit analyses and risk assessments should be used to inform agency decisionmaking.

We all agree that regulatory decisions will be improved if Federal agencies routinely use consistent economic and scientific analysis to test their proposals. The question is, should that analysis control agency decisions, as under the Dole-Johnston approach, by requiring that the agency choose the least-cost solution to every problem—the least-cost solution to every problem.

We had examples last week in the Chamber. If something costs $2 more but saves 200 lives, would it be worth that excess cost? Yes, it would. Right now, you could not do that, as this is worded, as I understand it. You have to have a least-cost solution.

I simply do not believe we always want the agencies to take the cheapest path to implement our laws. What if that alternative that costs $2 extra saves 200 lives? Do we say pick the cheapest; do not look at the benefits of the alternatives before you? That is what S. 343 does.

What if the cheapest alternative imposes more costs on State and local governments? Or what if it imposes more costs on small business, or a specific region of our country, a certain section of our Nation? Do we want to stop agencies from considering such distributional effects?

I think we have to let agencies use common sense. We keep saying that is what regulatory reform is all about. If so, then agencies should be able to choose the most cost-effective approach—the cost-effective approach we use in the Glenn-Chafee bill, looking not just at cost but also at the benefits. Remember, if for some reason we in Congress do not agree with the agency's solution, the congressional review provisions of both bills, S. 343 and S. 1001, allow us to rescind that rule by bringing it back to Congress for further action. That is something that has not been done in the past. We have that provision in both of these bills. So should we not create a process that allows for good decisions and a way to catch the bad ones rather than to create a process that ensures there probably will be bad decisions in the first place?

The Glenn-Chafee substitute requires the analysis of costs and benefits. It requires agencies to certify whether benefits justify the costs and to explain if those benefits do not justify the costs. In other words, Glenn-Chafee uses cost-benefit analysis to improve decisions, but it does not give important decisions over to a mechanical economic analysis. Too much is at stake with Government decisions to simply rely on a least-cost approach to protecting the public interest.

Let me point out here that the Dole-Johnston substitute also creates confusion with its Regulatory Flexibility Act decisional criteria. Section 604 is amended by adding a requirement that agencies not issue a rule unless it minimizes the economic impact ''to the maximum extent possible'' on small entities; that is, small businesses, State and local governments, and other small organizations.

The least-cost-alternative test in this minimal impact test will probably conflict quite often. Least cost overall may often involve more than the lowest cost possible for small entities. As brought to the floor, the Dole-Johnston substitute simply did not address this inherent contradiction. As now amended, there is something of a fix. Agencies are to explain whenever the tests are in conflict but can go forward. My personal opinion is this is still not enough.

To create a standard for government-wide rulemaking that says, ''Choose the alternative that is the absolute cheapest for small business and other small entities,'' is to me to turn away from common sense, away from traditional notions of administrative law and reasoned decisionmaking and to create a lengthy analytic process that, again, is geared to the cheapest solution, not the most cost-effective solution.

The Regulatory Flexibility Act was designed to ensure that agencies consider more flexible and less burdensome alternatives for small entities. The Dole-Johnston substitute would turn that important purpose around and let it govern decisionmaking. I am all for looking out for the interest of small business and State and local governments, but American public interest is broader than that. Protecting public health and safety and the environment, for example, requires a broad view of what works best for the Nation as a whole, not just for some.

That brings us back, once again, to the issue of balance that we are looking for.

The second major issue is the question of lookback. We believe that agencies should review existing rules, but their reviews should not be dictated by special interests or lead to wasteful litigation. Regulatory reform is not just about improving new rules. It must also look back and help existing

rules, existing laws that currently govern so many activities in our country. So we all agree that agencies should use cost-benefit analysis and risk assessment to look back and review existing regulations to eliminate outdated, duplicative and unnecessary rules and to reform and streamline others.

This process should be fair and open with plenty of opportunity for public comment, so that those who are interested in particular rules can make their concerns known to the agency. But this review should not be dictated by special interests, and I believe this is what would happen should the Dole-Johnston substitute become law. It would create a number of petition processes. That is an innocuous sounding phrase, ''petition processes.'' It would create a number of petition processes that has the potential of gridlocking agencies and putting special interests and the courts, not the agencies and the executive branch, in charge of the review.

The Dole-Johnston substitute uses a petition process to put rules on a schedule for review, and if the agency grants the petition, it has to review the rule in 3 years, which is a very short timeframe for such matters. If it fails to review the rule in that time, the rule automatically sunsets, goes out of existence. It just automatically sunsets. This process, it seems to me, puts the petitioner in the driver's seat, not the agency or the Congress who passed the law in the first place. It also creates a process more prone to just killing regulation than creating a thoughtful, balanced review of regulations.

In addition to the review petitions, the Dole-Johnston substitute has several other petitions for ''any interested party'' to challenge an agency on any rule, not just major rules. This is another example of the lawyer's-dream approach taken under this bill.

People could petition for the issuance, amendment, or repeal of any rule. They could petition for the amendment or repeal of an interpretive rule or general statement of policy or guidance, and they could petition for the interpretation of the meaning of a rule, interpretive rule, general statement of policy or guidance. That is a mighty big list of things that could be petitioned under S. 343.

Just to add to the confusion, the bill also has a separate section, section 629, for petitions for alternative compliance. Any person subject to a major rule can petition an agency to modify or waive the specific requirements of a major rule and to allow the person to demonstrate compliance through alternative means not permitted by the rule. In addition, it adds yet another petition process in section 634 so that interested persons may petition an agency to conduct a scientific review of a risk assessment.

Each agency decision on every one of these petitions, except that petition for alternative compliance, is judicially reviewable. What a dream for lawyers. At any step along the way, in other words, they can bring a suit for any one of the list of things I mentioned. All of these petitions and reviews add up to one of the worst parts of this bill. It is a formula for true gridlock. Agencies will have to spend enormous resources responding to each other and every petition. Then they can be dragged to court if they turn down a petition.

So I do not feel this comes close to being real regulatory reform. This is regulatory and judicial gridlock, and this is the way to keep the agencies from doing their jobs and to keep lawyers happy and, I would add, extremely prosperous. This bill would make all the rhetoric about tort reform a big joke, except in this case judicial gridlock means the health and safety of the American people would be jeopardized.

Mr. President, I think sometimes people think that a regulation is put out by the agencies with a little bit of effort and very few people involved. They do not understand why the delay and why they are so complex. We gave an example on the floor the other day.

Just one regulation pursuant to the Clean Water Act that dealt with some of the metal fabricating areas, just one regulation covers, now that it is in place and it has been finalized, covers 123 feet of shelf space. That is a pile of documents from the well, right here in the Senate, to the ceiling, which is 42½ feet, we found out from the Capitol Architect. That is three piles of documents from the well to the ceiling. Three piles of documents to implement one regulation, and under the Clean Water Act there are hundreds of regulations like that.

So we are not talking about something that is just a little thing—well, we can just throw that over at the agencies and they can handle that OK, they can grind these out OK. That was one regulation written to a small part of what was addressed in the Clean Water Act.

So these are not small things. When we talk about upping the cost for each regulation that would have to be written by some $500,000 to $800,000, I think is what the estimate was made last week on the floor, and we had testimony before the committee at one time that each regulation averages out, or can average out, around $700,000 per regulation to get it implemented.

We begin to see that this is no small matter. Now, these petitions that we were addressing here—each agency decision on every one of these petitions, except that petition for alternative compliance I mentioned, is judicially reviewable. That is an absolute dream for the lawyers. All of these petitions and reviews add up to one of the worst parts of the bill—that is, it is a formula for true gridlock. Agencies are going to have to spend enormous resources responding to each petition. They can be dragged to court if they turn down a petition—just a petition. It does not come close to being real regulatory reform. It is regulatory and judicial gridlock. It opens up to those who would thwart a particular piece of regulation that might be in the public good. They can thwart it and stop it dead in its tracks by keeping it in court. So this is a way to keep agencies from doing their jobs and to keep lawyers happy and prosperous. So all this tort reform becomes a big joke if this type of thing goes into effect.

Now, while the Dole-Johnston substitute creates a recipe for gridlock, the Glenn-Chafee approach provides a workable process of review. Every 5 years, agencies will have to produce a 10-year schedule of rules to be reviewed. Opportunities for public comment will identify rules that the agency may not think is pressing. While there is no petition process or judicial review, our process allows Congress to add rules to the agency schedule. In other words, if we think their priority review of existing rules and regulations is not what it should be, Congress can add rules to that agency's schedule.

Now, I must admit that I am not 100 percent happy with using the annual appropriations process, as we are proposing, to amend these schedules. I would be happy to consider alternatives. But the critical point is that we provide for amendments to the review schedules without bogging down agencies into the lengthy petition and judicial proceedings created under Dole-Johnston.

I think that is the key point. We want review. We want a review that is sensitive to the complaints of people covered by the rules, but we do not want gridlock. We want Government to keep working so that we can have more effective and more efficient protections of public health and safety and the environment.

The third major issue that distinguishes the Dole-Johnston substitute from the Glenn-Chafee substitute involves judicial review. The courts should be used to ensure that final agency rules are based on adequate analysis. Regulatory reform should not be a lawyer's dream, with unending ways for special interests to bog down agencies in litigation. We firmly believe in the courts' role in determining whether a rule is arbitrary or capricious. The Glenn-Chafee substitute authorizes judicial review of determinations of two things—whether a rule is major and therefore subject to the requirements of the legislation. Also, it allows review of the whole rulemaking record, which would include any cost-benefit and risk assessment documents.

In other words, it allows review of the final rules at the final stage before that can be taken to court to see whether all of the requirements of cost-benefit and risk assessment have been provided. We should not, however, provide unnecessary, new avenues for technical or procedural challenges that

can be used solely as impediments by affected parties to stop a rule. Courts should not, for example, be asked to review the sufficiency of an agency's preliminary cost-benefit analysis, or the use of particular units of measurement for costs and benefits.

While courts have a vital role to play, they should not become the arbiters of the adequacy of highly technical cost-benefit analysis or risk assessment, independent of the rule itself. Thus, Glenn-Chafee clearly states that ''if an analysis or assessment has been performed, the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter, section 623(D).''

I believe the way the Dole-Johnston substitute is currently drafted that lawyers and the courts will get into the details of a risk assessment or cost-benefit analysis. I think that is a mistake. From what I understand, there has been a great deal of discussion about this issue, and I believe many of us want the same result. The question is how to get there from here. Leaving the language as ambiguous as it is now is unacceptable. That is just an invitation to litigation.

With all of the attention to the question of to what extent might the courts get into the details of cost-benefit analysis and risk assessment, we have not discussed enough the amendments that the Dole-Johnston substitute makes to the Administrative Procedure Act. I am not a lawyer, but I know that with every statute we pass, the courts slowly, over the years, develop a body of case law that interprets each statute. The APA is no exception. It was enacted in 1946 and, to a great extent, it has been given more meaning by the courts in the intervening 50 years than Congress was able to squeeze into its relatively brief sections in 1946. While judicial interpretation of administrative procedures continues, I am not aware of any major criticisms of the APA. Certainly, the Administrative Conference has not proposed any major overhaul. But that is what will happen should the Dole-Johnston substitute be enacted into law. Its amendments to the APA, innocuous though they may seem to some, will usher in a whole new generation of lawsuits that will use the new legislative language to attack the case law that has developed around the 1946 statutory language.

Adding more petition processes, requiring new details in rulemaking notices, adding the phrase ''substantial support in the RECORD'' to the traditional formulation of arbitrary and capricious, these will invariably be used by lawyers to go after rules not on substantive grounds but on these procedural grounds. This is not reform. This will recreate a litigation explosion that will give deeper gridlock than we could ever imagine.

Let me just add that this is one of the reasons that I believe such important pending rules as the USDA meat inspection rules—the rules that are needed to protect the American people from foodborne illnesses, such as E. coli—should be exempted from Dole-Johnston. Independent of its cost-benefit analysis, all the supporting evidence, procedural steps, rulemaking notices, and more will all be open to challenge in the courts under these APA amendments.

Again, this is not reform. This is a lawyer's dream and a potential nightmare for the American people. I am sure my colleagues, Senator LEVIN and Senator BIDEN, both excellent lawyers, will go into this issue. But it seems to me that these unneeded amendments to the APA alone are reason enough to oppose the Dole-Johnston substitute.

The fourth major difference between the two bills is the concern about special interest. Regulatory reform should provide a new across-the-board process for Federal agency decisionmaking. It should not provide program fixes for special interests.

From the beginning, S. 343 has included a number of provisions that are not about Government-wide regulatory reform. Quite the contrary, they are about giving specific relief to specific interests or stalling particular programs. Frankly, I do not think these provisions have any place in a regulatory reform bill that should be meant to establish a fair process, fair and equal to all.

Unlike S. 343, and unlike its revised alternative, the Dole-Johnston substitute, our bill, the Glenn-Chafee substitute, like its predecessor, Senator Roth's S. 291, has no such special fixes. Let me say that I sympathize with those who would like to fix particular problems. I know of examples where regulations go too far and where agencies go too far. But as testimony before our committee showed, 80 percent of the rules are required by Congress. It is not up to the agencies. We require them in the legislation that we send over. So it is not just the regulatory process that needs fixing. We in Congress are also responsible for a lot of these problems. In other words, if we have a problem, we ought to look in the mirror a good part of the time.

Let us focus on making the regulatory process better as a whole and not affix for special interest. Let me give some examples. This is not just idle talk. The original S. 343 tried to rewrite the Delaney clause. Now, I happen to think the Delaney clause needs some modification, but they went too far in rewriting the Delaney clause. They also shut down the EPA toxic release inventory, providing enforcement relief for companies and so on.

Now, while I agree that some of these legitimate problems deserve our attention, this is not the place. A regulatory reform bill should address regulatory issues. It should not become a Christmas tree for lobbyists to hang solutions to whatever problems they may have.

Over the last week, the Senate's resolution of amendments on several of these special fixes shows that they are divisive, unrelated to the basic process reforms proposed in the legislation, and simply an attempt to avoid going through the appropriate legislative channels.

For example, the section that would delay an increased cost for environmental cleanups was stricken on the grounds that it was a specific program fix unrelated to the larger process reforms, and that Superfund reform is currently under consideration by the committee of jurisdiction.

When it came time to consider a similar amendment to strike a section that would restrict EPA's toxic release inventory, the same arguments were rejected. Outside the scope of general regulatory reform—no matter. More properly considered by the committee of jurisdiction—no matter. Special interests want the TRI gutted—you got it.

This is not how we should be reforming the regulatory process. We say we are creating a new, fair, and reasonable process. What we are really showing the American people is that if they are a big enough company, they use enough high-priced lawyers, you can fill the halls of power and get relief.

It is unfortunately clear how a majority of the body weigh the community's right to know about the release of toxics into the environment against companies who apparently do not want companies around the plant to know what they are drinking and breathing.

The irony for me is that the TRI is perhaps the most notable example of a rule that is relatively inexpensive and really not that burdensome. It is a so-called risk communication rule. Unlike a command and control rule that would prohibit the use of such toxic materials, TRI merely requires industry to inform the communities of the release of such chemicals.

Now, do you know who cares about the TRI as much as anyone? It is local fire departments. People probably would not have thought of that, but they are the men and women who have to fight the local chemical plant fires and clean up chemical spills, and they want to know what they will face. They do not want a Bhopal, the tragedy that took place in India, to take place in their city or town.

But no matter to the proponents of S. 343. Powerful business interests and their lawyers have sent the word around they do not want to have to comply with TRI. So it will be reworked, it will be revised, it will be restricted. I know what that means. I do not think the American public comes out on top in that particular consideration.

These and other fixes are found in the Dole-Johnston substitute. They are not found in the Glenn-Chafee substitute. We stuck with the process of how the Government should go about regulatory reform. This is reason enough to support our bill.

The fifth and final major difference between our two bills involves the implementation of the new reforms. In simple terms, this is a question of the statute's effective date. Last week, several questions arose about the effect of reform legislation on pending rules, on expected rules, and on avenues for increased litigation. I have already talked at some length about these in this statement.

I believe if we are serious about changing the way Federal agencies make regulatory decisions, if we are serious about improving those decisions, about reducing burdens and improving commonsense solutions to pressing issues involving public health and safety and the environment, then we must have a sensible approach to implement the reforms.

The Dole-Johnston substitute, as it now stands, reaches back and covers health and safety rules whose notice of proposed rulemaking occurred as early as April of this year. While that is supposed to let some rules off the hook, it also means that should that bill become law, rules in the pipeline between April and the date of enactment could be challenged in court and would have to go back to square one to comply with the many requirements of the new law.

Now, I want to improve rulemaking. But I see no value in wasting resources already expended to promulgate a rule. If the rule is so bad, a court can overturn it under current law. There is no need to reach back and waste Government resources. The Dole-Johnston immediate effective date for all other rules simply adds to this bad picture. Challenges will flood the courts the very next day to go after rules developed under current law—current until the day Dole-Johnston S. 343 is enacted.

During our debate last week, proponents of the S. 343 substitute argued that because the Glenn-Chafee substitute does not have a broad exemption for health and safety rules, it is more restrictive than Dole-Johnston in its effect on pending rules. This argument is based on a misunderstanding of our bill.

We apply our reform legislation to rules that are proposed 6 months after enactment. This delay gives agencies a reasonable amount of time to develop new procedures, bring new regulatory proposals up to the new standards before they are published as proposed rules. Again, Dole-Johnston applies all requirements immediately.

Once promulgated and coming under Glenn-Chafee, rules will face analytic requirements that are tough, but they are also fair and they are not unreasonable. Remember, we do not have the least-cost alternative. We do not have the least-cost alternative test or the minimal impact reg flex test of Dole-Johnston. We are not afraid to have important rules go through our process. They will face a tough test. But if they are needed, the rules will survive.

What they will not face are the challenges that rules under Dole-Johnston would face such as the new APA challenges that would be created for rulemaking procedures and substantial evidence requirements.

The basic question is whether we want government to work better for the American people or whether we want to impose new requirements in order to frustrate decisions, create more delay, waste resources, introduce uncertainty, and open up new avenues for litigation.

I believe that implementation of the Glenn-Chafee substitutes will improve decisionmaking and will reduce burdens on the American public.

The Dole-Johnston substitute, on the other hand, will create problems, cost money—we do not know how much yet—and harm the public interest.

In conclusion, I want to state again, I want regulatory reform. We have worked on this in the Governmental Affairs Committee for the last several years. It is not something that came up just recently.

I believe that S. 343 does not provide the balanced regulatory reform we should have. I believe the Glenn-Chafee S. 1001, the substitute that we are proposing today, does that job.

In the coming hours of debate, we will focus more closely on these two alternatives. I welcome suggestions for improvement to our bill. I am sure there are details that can be revised. I am also sure our bill provides a better approach. I urge our colleagues to support our substitute.

Mr. President, I reiterate, once again, these areas: The Glenn-Chafee substitute focuses on truly major rules. Glenn-Chafee substitute requires cost-benefit analysis for all major rules. It does not take the least-cost approach that the Dole-Johnston bill does.

The Glenn-Chafee substitute provides for review of current rule but with no automatic sunset. If we run out to a time period and the agency has not taken adequate action in the prescribed time period, then they must issue a notice of proposed rulemaking to repeal the rule. In other words, either approve it or put the forces in motion to repeal it, but allowing public comments on the rule.

Also, the Glenn-Chafee substitute is not a lawyer's dream. We allow for judicial review of the determination of a major rule and whether the final rule is arbitrary and capricious in light of the whole rulemaking file.

The Dole-Johnston bill provides procedures, petition, multitudinous places where suits can be filed to stop even the best of legislation.

Also, the Glenn-Chafee substitute does not create brand-new petitions by private persons that will eat up agency resources and let special interests—not the agency or Congress—guide priorities.

Lastly, Glenn-Chafee substitute has no special interest provision. We did not put a section in here that deals with things like the Delaney clause or toxic release inventory or things like that, that have a special interest to a special few.

For all the reasons given this morning, Mr. President, I urge support of the Glenn-Chafee substitute which was laid down Friday evening before we left. I yield the floor.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, the lines in this debate are becoming very, very clear. If you are for risk assessment, if you are for regulatory reform, you should be for the Dole-Johnston bill which is pending. If you are against that reform, you should be for the Glenn-Chafee substitute because, Mr. President, the Glenn-Chafee substitute is sham reform. Make no mistake about it, it is totally consensual. There are no requirements to it. If the agency head wants to do it, it will be done.

We are told that this is an outgrowth of the Roth bill which came out of committee unanimously, with both Democrats and Republicans supporting it, and so it did. And it had some teeth in it. All of those teeth have now been removed, so now it is totally consensual.

We do not need a bill for consensual reform. We now have that. That is the problem. Right now there is a risk assessment rulemaking which applies to Federal agencies, but it is consensual and they do not do it—and that is the problem. We have been told there are all these lists of these rules, the top 10 list we have been talking about here on the floor, and that some of those were not Federal rules, they were State rules or whatever. But what really is the problem? The problem is that Federal agencies today are not doing the risk assessment, are not doing the cost-benefit analysis, are not using good science, and their regulations are a disaster.

Who says so? EPA says so. In their own studies they have determined that the risks which they have rules against are risks perceived by the public rather than real risks. So anyone who says there is no problem with rulemaking, let them go on like they are doing, let them be consensual; we can trust these bureaucrats, they have done a great job—those who say that are not reading EPA's own documents.

I say this is a consensual bill. It has no teeth. What is the basis of saying that? If you look at section 625 of the Glenn-Chafee substitute, it says that the agency head picks the rules to be reviewed ''in the sole discretion of the head of the agency.'' Let me repeat that. According to the Glenn-Chafee substitute, the only rules to be reviewed are those which the agency head picks at the sole discretion of the agency head.

If there was any chance of any court reversing that discretion, that also is totally removed by section 625, which says on judicial review that ''judicial

review of agency action taken pursuant to the requirements of this section shall be limited to review of compliance or noncompliance with the requirements of this section.''

What does that mean? It means when you judicially review, you look at that phrase ''sole discretion of the head of the agency,'' and it disappears. There is no judicial review. There is sole discretion of the agency. There is nothing enforceable. So if Carol Browner, the head of the EPA, decides she wants to review a rule she can do so. And if she does not want to, guess what, Mr. President? Nobody can force her to do that. She can do that today. She can do that today. So why do we have all these pages of bills if we are going to adopt the Glenn-Chafee substitute? What is the point of all that, if it is all going to be consensual? If we think these bureaucrats are doing a great job?

How about new rules? First of all, let me compare that with the Roth bill. Under the original Roth bill, which came out unanimously, all rules had to be reviewed by every agency head, every single rule had to be reviewed—every single major rule, $100 million, had to be reviewed. And at the end of 10 years they were sunsetted, boom, unless they were continued or modified, which, in turn, would have been a major Federal action or final agency action subject to judicial review.

So under the original Roth bill, it had sharp teeth. In fact, I think its teeth were maybe even a little too sharp because they had to review all the rules. But the fact of the matter is, all those rules were there to be reviewed and they were there, there was judicial review of the agency action.

So if you were an aggrieved party and there was one of these bad rules, either it was sunsetted or you had your right to come in and have your say. Under the Glenn-Chafee bill, all of those rules out there, which again EPA, in its own documents, says do not realistically reflect risk—some of them imposing hundreds of millions of dollars, hundreds of billions of dollars in some instances, costs on the taxpayers and on citizens—you cannot get to them. You have no right to be heard. You have no ability to review those rules.

Oh, you can call it special interest. You can say special interests should not be able to come in and be heard on these rules. I can tell you who pays for those rules. It is the American taxpayer. It is the American citizen who pays for those rules.

How about the new rules under the Glenn-Chafee amendment? We have a new provision here that says you do not have to do a cost-benefit analysis if a cost-benefit analysis is ''expressly or implicitly inconsistent with the statute''—''expressly or implicitly inconsistent with the statute.''

And do not forget the agency head is able to interpret the statute and that judgment is reversed only if it is arbitrary and capricious. So a new rule comes along and the head of the agency says, ''I think this is not expressly inconsistent.'' There is nothing in this new statute that comes along that says you should not do a cost-benefit analysis. There is nothing here that prohibits it. There is no language on it. But I, agency head, think it is implicitly inconsistent with the statute.

If there was ever a subjective rule, beauty in the eye of the beholder, unfettered discretion in an agency head, it is found in this word ''implicitly'' inconsistent. Implicitly inconsistent—Mr. President, it is a hole wide enough to drive three M–1 tanks side by side through and never touch the sides. It does not pass the straight-face test. Really, ''implicitly inconsistent''? If that is not enough, they have taken out the rule about the benefits justifying the costs.

I have told my colleagues, when we initially came up almost 2 years ago with the first risk assessment amendment—which passed overwhelmingly here in the Senate—of the example of the carbon 14 rule which EPA came up with which set these limits at 0.063 of the amount of carbon 14 contained in the body naturally, and they set that limit at that amount. Yet, it was going to cost $2.3 billion to comply with the rule.

If there was ever an example of something that needed to be done—I mean you needed—they did not know what it was going to cost, and it was clearly not a risk. In other words, this was over 6,000 times the risk of dancing with your wife than was allowed in this carbon 14 provision. But it was going to cost $2.3 billion to comply with it.

Why should you not have that kind of information? Why should not that be there? Under this new language you do not have to certify that the benefits justify the cost. All you have to do is indicate whether the benefits justify the costs.

In other words, rather than a rigorous test that says the benefits ought to justify the cost, all you have to do is sort of give the information whether it is or whether it is not. It does not matter in the bill.

So, Mr. President, we have consensual legislation that does not make any requirements on anybody to do anything. And it is, as I say, sham reform.

Now, if you are against risk assessment, if you are against cost-benefit analysis, vote for this amendment because you can feel very confident that you are not going to change anything in the Federal Government, that it is going to be business as usual, that we are going to let the bureaucrats continue to waste the money of American taxpayers and American citizens as they have in the past by the hundreds of billions of dollars.

Mr. President, there really are two bills being debated; two Dole-Johnston bills. One is the bill that is before the Senate. The other is this fictitious bill that is misdescribed, mischaracterized, factually misquoted. And let me tell you what I mean.

My friend from Ohio, Senator GLENN, just said that the Dole-Johnston bill requires the cheapest solution. He went on to say you could not get an alternative that cost a little more and saves 200 lives. He just said that, Mr. President.

Mr. President, here is the decisional criterion. It says you adopt the ''least cost.'' Or ''if scientific, technical, or economic uncertainties are nonquantifiable benefits to health, safety, or the environment, identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head * * *'' explains that, then you may adopt the ''more costly alternative.''

What are ''nonquantifiable benefits to health, safety, or the environment?'' Mr. President, the value of 200 lives is first of all a benefit defined as a benefit in the bill.

Second, it explicitly states that you can have a more costly alternative; not only that, but ''scientific, technical, or economic uncertainties'' because the science is frequently uncertain.

Mr. President, it escapes me how people can continue to say that we require the ''least cost alternative'' when the plain language of the bill states otherwise. I mean, why can people not understand the English language? Why can they not understand this, Mr. President? It is clear. And we have continually stated what that English language is.

The fact of the matter is that the agency head under this has enormous discretion. And the agency head ought to have enormous discretion. But it requires this rigorous analysis so that if there is uncertain science the agency head has to make an explanation of those considerations. And if it is nonquantifiable benefits to health, safety, or the environment, you have to make an explanation of those things. It is designed to focus the logic of the thinking of the agency process to make them focus on what it is they are trying to achieve because in the past that has not been done. We do not know. With that carbon 14 regulation, we just did not know what the thinking was because they had ignored their own scientists, did not know what it was going to cost, and trotted out the regulation without any idea of what they were doing.

Mr. President, let me turn to judicial review. The judicial review provisions of the Roth amendment have changed at least twice since Senator Roth reported that legislation. It was changed again this morning.

Mr. President, the fact of the matter is that the Glenn-Chafee substitute has the faults which they accuse the Dole-Johnston bill of having—which we do not have and which they do have. May I explain?

First of all, let me say what the problem is here. What we wanted to achieve all along was to have a review of the final agency action; that is, in most cases that will be the major rule. We wanted that to be approved, to be tested according to the standard of whether or not it is arbitrary and capricious or an abuse of discretion. Those are the old standards in the Administrative Procedure Act. We wanted those standards to govern the final agency action. We did not want the cost-benefit analysis, or the risk assessment provisions to be independently reviewed so as to test them for the procedures, for the adequacy of the procedures.

The reason we wanted the risk assessment and the cost-benefit analysis to be made part of the record is because only by making them part of the record and considering that can you understand whether the final agency action is arbitrary and capricious. In effect, it would be a rule of common sense.

Let me tell my colleagues how it might work on three rules which may come up in the future. They are not proposed now. But it will give you a good indication of what is at stake here.

One possible rule is electromagnetic fields, so-called EMF. EMF regulations could cost literally hundreds of billions of dollars because it could require the relocation of electric lines, high power tension lines all over this country. We have ongoing studies now, scientific studies, as to whether or not EMF causes cancer, and if so, at what levels, and to what extent. I might tell my colleagues that we do that under the Energy Committee. We have been funding those studies. I do not want to prejudge all of them. But the preliminary studies indicate that the level at which people receive EMF does not cause cancer. But again, that will await bringing in all of the science.

Let us suppose you have an EMF rule here, and let us suppose that the scientists that they pick for peer review violates section 627 on conflict of interest. Let us say, for example, that all of the scientists, if it is EPA who is doing the rule, are from the electric power industry. They come up with a rule that says no problem; it does not cause cancer.

Why, Mr. President, in that kind of situation, with the importance of that rule, the huge amount of expense involved, the centrality of the question of science, then I believe, if I were in the Court—and that is the record we had under this language—I would reverse it and send it back and say you have to get this science right, because the science is very important. On the other hand, if you had a rule where the science is fairly well understood and is not central to the issue, I think you could leave out a risk assessment altogether, and the final agency action might not be arbitrary and capricious.

The point is that the risk assessment might or might not, depending on the circumstances, be grounds for reversal.

Let us take another one: radon. We have had various radon legislation and some rules up on radon. Radon could be very expensive as well. And the scientific judgments there are very well known. We know radon causes cancer, but at what levels does it cause cancer, and in what sections of the country is it a risk, and what efforts ought to be made to deal with radon.

If you picked scientists who are, say, with the home building industry and are not impartial, I can imagine a reversal on that ground. If you did not have a cost-benefit analysis on something like radon, which could cost a huge amount of money, I can imagine a reversal on that ground.

Or suppose we have a regulation on second-hand tobacco smoke, to name one of our biggest areas now. Suppose you had a regulation on that, and all the scientists came from the tobacco companies. You mean to tell me you could not reverse on that ground? Because the science is so critical to that particular issue. On the other hand, if you were going to be setting a hunting season—I think, by the way, hunting seasons have been expressly exempted. In earlier versions of the act, they were not. But I can imagine that you might leave out the cost-benefit analysis altogether in setting a hunting season, and it would not affect the final agency action. So it is a rule of reason, and under this language:

Failure to comply with this subchapter—

This subchapter, of course, deals with risk assessment and cost-benefit analysis.

and subchapter III may be considered by the Court solely—

s-o-l-e-l-y, which means solely.

for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion.

Mr. President, we are continually told by the opponents of risk assessment that ''solely'' does not mean solely. ''Solely'' means something else. ''Solely'' means solely part of the time and means something else some other part of the time.

Mr. President, it is as clear as the noonday Sun on a cloudless day that ''solely'' means solely and only for the purpose of determining whether that final agency action is arbitrary and capricious, which is exactly what we want to achieve.

Now, Mr. President, let us look at this new iteration of the Glenn-Chafee judicial review language. It says:

When an action for judicial review of an agency action is instituted—

In other words, when you get to appeal.

any analysis or assessment of such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.

''For the purpose of judicial review of the agency action.''

Now, what is the guiding rule of review of agency action? Under the Administrative Procedure Act, particularly section 706 of the Administrative Procedure Act, it provides for review of all agency action—all final agency action.

So I assume that section 706 is the guiding rule for appellate review. I tell my friend from Ohio that I am going to ask him some questions about it if he is willing to answer when I finish these remarks because I would like to know what in his opinion the standard of that review is.

When you say, ''judicial review of the agency action,'' what is the standard? Now, if it is section 706, section 706 has two pertinent provisions. One is the same standard we have here, that is, arbitrary and capricious or an abuse of discretion. But it also has subsection (d) that says ''without observance of procedure required by law.''

Now, if I am correct that it is section 706 under which this is reviewed, then under the Glenn-Chafee amendment by that last phrase you can review both the arbitrary and capricious nature of the final agency action, the abuse of discretion of the final agency action, and you can review with the phrase ''without observance of procedure required by law.''

Now, there is another provision, though, of the Glenn-Chafee judicial review provision upon which they rely which says this:

If an analysis or assessment has been performed, the Court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.

Now, the operative phrase here, Mr. President, is ''particular.'' One of the oldest rules of statutory construction is that when two provisions are in pari materia; that is, when they are on the same subject and particularly when they are in the same section, you read those two together so as to give life to both of them, so that you do not nullify one at the expense of the other.

Now, I will tell you what this means to me. ''Shall not review to determine whether the analysis or the assessment conformed to the particular requirements of this chapter.'' The word ''particular'' must have some meaning, and I believe that meaning is to institute a de minimis test; that is to say, you do not reverse for procedural errors of small degree, but you may reduce for procedural errors of greater degree.

If that is the not the meaning, then what is the meaning of the word ''particular''? They could have said conform to the requirements of this subchapter as opposed to the particular requirements of this subchapter. And if, Mr. President, I am wrong on that, then you still have a review under the other provisions of section 706, which leads you to the same conclusion we have here.

So either the Glenn-Chafee amendment goes beyond what our amendment goes to by at least implicitly allowing a procedural review, or it at

least provides for a review of the final agency action and to the same extent that ours does.

So now, Mr. President, if the distinguished Senator from Ohio would yield for a few questions, if I may ask him, when you say ''purpose of judicial review of the agency action,'' by what rule is that? Is that not under section 706 of the APA and, if not, then under what standard?

Mr. GLENN. I think we are referring to—you are talking about section 706?

Mr. JOHNSTON. In your amendment, this is section 623(e), providing for judicial review, the last sentence of which says, ''When an action for judicial review of an agency action is instituted, any analysis or assessment for such agency action shall constitute part of the whole administrative record of agency action for the purpose of judicial review of the agency action.''

My question is, Is that review not under section 706 of the Administrative Procedure Act, and if that is not the applicable section, what is the applicable section?

(Mr. KYL assumed the Chair.)

Mr. GLENN. I reply to my colleague from Louisiana, we maintain the current status under the APA, the standard being arbitrary and capricious, which has been the case for a long time.

Mr. JOHNSTON. That is section 706.

Mr. GLENN. Section 706. It is my understanding, under Dole-Johnston, it expands 706 for scope of review. It allows a court to set aside an agency action if findings are ''without substantial support.'' That is a new and higher standard of review than APA has acknowledged in the past.

Mr. JOHNSTON. That is a different section. For the purpose of compliance with this subchapter, subchapter II, and subchapter III, that is risk assessment and cost-benefit analysis, that review shall be solely on the basis of what is arbitrary and capricious or an abuse of discretion.

Mr. GLENN. Then we disagree on the meaning of——

Mr. JOHNSTON. ''Solely''?

Mr. GLENN. Arbitrary and capricious.

Mr. JOHNSTON. That language is excerpted—it is the same standard that you have. That is section 706.

Mr. GLENN. No, it is my understanding Dole-Johnston goes beyond that and establishes ''without substantial support'' as a new and higher standard of review, where we stick with the Administrative Procedure Act that has been in effect, acknowledged under law, a whole body of law developed under that, and we stick with that so there can be no misunderstanding of it. Dole-Johnston goes well beyond that and establishes a whole new procedure.

Mr. JOHNSTON. I say to my friend, that is a different question. That is a different section. We are talking about the review of cost-benefit analysis and risk assessment which, under our language, specifically states that it is solely for the purpose of determining whether the final agency action is arbitrary and capricious.

My question to you is, under your language which says—you allow risk assessments—''analysis or assessment shall constitute part of the whole administrative record for the purpose of judicial review of the agency action,'' is that review not under section 706?

Mr. GLENN. The difference here being, what we provide is that final review, just before the rule or reg would go into effect, then it would be challengeable in the court. There would be judicial review at that point. They could consider everything that has happened up to that point. It would not be judicially reviewable at all the multitudinous steps along the way that would still be permitted under Dole-Johnston.

Mr. JOHNSTON. I do not even know what you are talking about, multitudinous. Name one place.

Mr. GLENN. I will get the detail on that a little later on today.

Mr. JOHNSTON. I suggest to my friend from Ohio that there is only one review, explicitly only one review, under our proposal, and that is final agency action.

Mr. GLENN. Will the Senator yield so I can read some of the areas——

Mr. JOHNSTON. I want to clear this up, because we say specifically that there is—all right, let me read this, from section 625 of Dole-Johnston:

> Compliance or noncompliance by an agency with the provisions of this subchapter and subchapter III shall be subject to judicial review only in accordance with this section.
>
> (b) except as provided in subsection (e) and subject to subchapter II each court with jurisdiction under a statute to review final agency action to which this title applies has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III. . . .

And then next:

> Except as provided in subsection (e), no claims of noncompliance with this chapter or subchapter III shall be reviewed separate or apart from judicial review of the final agency action to which they relate.

And then we state here that that is a review of final agency action.

It is as clear as it can be. Now tell me where else you were going to be able to review this? It says ''compliance or noncompliance shall be subject to judicial review only in accordance with this section,'' and there is the section. It is final agency action. Now is that not clear, I ask my friend?

Mr. GLENN. No, I do not think it is. EPA has given a list of things where they feel this could be challenged, where litigation could come out of this. I was asked a moment ago, I believe the gist of it was, what possible litigation could come out of this?

Mr. JOHNSTON. Right.

Mr. GLENN. We have here—I do not know whether it is necessary to read all of these or not—but there are 144 items that could be litigated under S. 343 as counsel to EPA interprets this. Let me go through some of these.

No. 1: Did the agency sufficiently explain the need for and objectives of a rule?

No. 2——

Mr. JOHNSTON. On that first one——

Mr. GLENN. Is the Senator going to let me read these?

Mr. JOHNSTON. Not 144.

Mr. GLENN. I am not the counsel for EPA. I am saying this is their interpretation of exactly what you are referring to here.

Mr. JOHNSTON. But you said you would have a separate review, even under what counsel for EPA says, that would come only at the final review and solely for the purpose of determining whether or not the final agency action was arbitrary and capricious; is that not correct? It is clear.

Mr. GLENN. We stick with the arbitrary-and-capricious rule. We do not expand that as Dole-Johnston does.

Mr. JOHNSTON. There is the standard right there. It is plain English. It is as plain as it can be. It is ''arbitrary and capricious or abuse of discretion,'' that is the sole and only basis for review of the cost-benefit analysis or of the risk assessment. That is it. Look, read the language.

Mr. GLENN. I say to my friend from Louisiana, there is a difference of opinion here on what is meant by the language. I know we have had a number of discussions back and forth, and with the Senator from Louisiana and Senator LEVIN on the Senate floor.

The interpretation counsel at EPA is giving on this is the one I was about to read, and there are 144 different questions where they feel litigation can come up under this.

Mr. JOHNSTON. Those may be requirements of risk assessment or cost-benefit analysis which, to the extent they are relevant, can be used to challenge the final agency action. Maybe so. But those are only arguments you make. The first one there is notice. Do you really think you are going to throw out a final agency action as being arbitrary and capricious because they did not give notice?

Mr. GLENN. This was not notice. I read this. ''Did agencies sufficiently explain the need for and objectives of a rule?''

They feel, under S. 343, this language under your proposal could be challenged in litigation.

Mr. JOHNSTON. You can challenge anything.

Mr. GLENN. No, not under Glenn-Chafee, you cannot challenge anything. We have the final rule that can be challengeable, or whether it is a major rule or not. We specify that.

Mr. JOHNSTON. If you ever got a cost-benefit analysis done under Glenn-Chafee, all that is consensual. If you want to do it, if you feel like it, if it feels good, do it. Otherwise, do not do it because you do not have to. It is business as usual. Am I not right that it is all consensual on the lookback process under Glenn-Chafee; is that correct?

Mr. GLENN. No, that is not correct. I will tell you the difference. What we provided in both pieces of legislation is the right for Congress to get in the act and review anything that we want to that could come back to Congress. So if there is any question about it, it comes back to Congress. That is provided in both pieces of legislation.

Mr. JOHNSTON. Oh, well, sure. Congress can always pass a law. The Constitution provides that. This bill does not provide that. But save Congress enacting a law, it is consensual, is it not?

Mr. GLENN. I say to my friend that we provide specifically for a procedure for any rule to come back to Congress for further consideration. And in both bills, we give a time period that is required for Congress to review whatever it is that was brought back. One is 60 days, the other is 45 days—not a huge difference. So it seems to me that protects whatever may be required or whatever may come up over there, as far as whether something has had adequate review or not before it was put into a rule.

Mr. JOHNSTON. Well, let us say that the director of EPA or another agency looks back and says, ''We have done a heck of a good job, we have great bureaucrats in this agency, and we do not think anything needs to be reviewed.'' So the slate is clean, it is a tabula rasa, it is a devoid of any rules to be reviewed. I am an aggrieved party and what is my remedy? To come to Congress and ask them to pass an act? That is it, is it not?

Mr. GLENN. I will reply. The standard of review is arbitrary and capricious under Dole-Johnston, but that issue itself is what can be reviewed. Now, these 144 items here—

I ask unanimous consent that these 144 items be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

ONE HUNDRED FORTY-FOUR ITEMS TO LITIGATE UNDER S. 343 (VERSION 783)

1. Did agency sufficiently explain the need for and objectives of a rule?

2. Did agency identify and sufficiently discuss all significant legal and factual issues presented by a rule?

3. Did agency identify and adequately describe all reasonable alternatives to a rule?

4. Did agency adequately explain why all reasonable alternatives to rule were rejected?

5. Did agency sufficiently explain whether a rule is expressly required by the text of a statute?

6. Did agency identify and sufficiently explain all the statutory interpretations upon which a rule is based?

7. Did agency identify all alternative statutory interpretations and sufficiently explain why all such alternatives were rejected?

8. Did agency identify each factual conclusion upon which a rule is based and adequately explain how each such conclusion is substantially supported in the rulemaking file?

9. Did agency respond to rulemaking petition under §553(1) within 18 months?

10. Did agency appropriately deny a rulemaking petition under §553(1)?

11. Does a rule cost more than $50 million?

12. Is rule closely related to other rules that aggregate into major rule?

13. Did initial cost-benefit analysis contain a sufficient description of the benefits of a proposed rule?

14. Did initial cost-benefit analysis include a sufficient description of how the benefits would be achieved?

15. Did initial cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to receive such benefits?

16. Did initial cost-benefit analysis contain a sufficient description of the costs of a proposed rule?

17. Did initial cost-benefit analysis include a sufficient description of how the costs would result from the rule?

18. Did initial cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to bear such costs?

19. Did initial cost-benefit analysis adequately identify alternatives that require no government action?

20. Did initial cost-benefit analysis adequately assess costs/benefits of no-action alternatives?

21. Did initial cost-benefit analysis adequately identify alternatives that accommodate differences among geographic regions?

22. Did initial cost-benefit analysis adequately assess costs/benefits of geographic alternatives?

23. Did initial cost-benefit analysis adequately identify alternatives that accommodate different compliance resources?

24. Did initial cost-benefit analysis adequately assess costs/benefits of different compliance resource alternatives?

25. Did initial cost-benefit analysis adequately identify performance-based, market-based alternatives, or other flexible alternatives?

26. Did initial cost-benefit analysis adequately assess costs/benefits of performance-based, market-based, or flexible alternatives?

27. Did initial cost-benefit analysis adequately assess costs-benefits of all other reasonable alternatives?

28. Did agency in proposed rule adequately verify quality, reliability, and relevance of science?

29. Did final cost-benefit analysis contain a sufficient description of the benefits of a proposed rule?

30. Did final cost-benefit analysis include a sufficient description of how the benefits would be achieved?

31. Did final cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to receive such benefits?

32. Did final cost-benefit analysis contain a sufficient description of the costs of a proposed rule?

33. Did final cost-benefit analysis include a sufficient description of how the costs would result from the rule?

34. Did final cost-benefit analysis contain a sufficient description of the persons or classes of persons likely to bear such costs?

35. Did final cost-benefit analysis adequately assess costs/benefits of performance-based, market-based, or flexible alternatives?

36. Did final cost-benefit analysis adequately assess costs/benefits of all other alternatives?

37. Did agency adequately consider benefits and costs incurred by all affected persons or classes of persons, including specially affected subgroups?

38. Did agency adequately determine whether benefits of rule justify costs?

39. Did agency adequately determine whether the rule employs flexible alternatives to the extent practicable?

40. Did agency adequately determine whether rule adopts the least cost alternative of the reasonable alternatives?

41. Did agency correctly identify and sufficiently describe scientific, technical, or economic uncertainties or nonquantifiable benefits that make a more costly alternative appropriate and in the public interest?

42. Did agency sufficiently describe why such alternatives are appropriate and in the public interest?

43. Did agency sufficiently explain why any such alternative is the least cost alternative of the reasonable alternatives necessary to take into account uncertainties or nonquantifiable benefits?

44. Did agency correctly determine that rule is likely to significantly reduce risks addressed?

45. If uncertainties preclude such a finding, did agency adequately justify the issuance of the rule?

46. Did agency correctly determine that a rule could not satisfy the cost-benefit decisional criterion applying the statutory requirements upon which the rule is based?

47. Did agency quantify costs and benefits to extent feasible?

48. Did quantification adequately specify ranges of predictions?

49. Did quantification adequately explain margins of error?

50. Did quantification adequately address the uncertainties and variabilities in the estimates used?

51. Did agency adequately describe nature and extent of nonquantifiable costs and benefits?

52. Did agency clearly articulate relationship of benefits to costs?

53. Is understanding of industry-by-industry effects of central importance to a rulemaking?

54. If so, were costs and benefits broken down appropriately on industry-by-industry basis?

55. Did agency correctly determine that conducting a cost-benefit analysis would have been impracticable due to an emergency or threat likely to result in significant harm to the public or natural resources?

56. In developing a preliminary schedule for regulatory review, did the agency appropriately consider whether a rule is unnecessary and may be repealed?

57. In developing a preliminary schedule for regulatory review, did the agency appropriately consider whether a rule would meet the decisional criteria of §624?

58. In developing a preliminary schedule for regulatory review, did the agency appropriately consider whether the rule could be amended to substantially decrease costs, increase benefits, or provide greater flexibility for regulatory entities?

59. In developing a final schedule for regulatory review, did the agency appropriately consider whether a rule is unnecessary and may be repealed?

60. In developing a final schedule for regulatory review, did the agency appropriately consider whether a rule would meet the decisional criteria of §624?

61. In developing a final schedule for regulatory review, did the agency appropriately consider whether the rule could be amended to substantially decrease costs, increase benefits, or provide greater flexibility for regulated entities?

62. In developing a final schedule for regulatory review, did the agency appropriately consider the importance of each rule relative to other rules being reviewed under the section?

63. In developing a final schedule for regulatory review, did the agency appropriately consider the resources expected to be available to the agency for the review?

64. Did petition establish substantial likelihood that future impact of rule would be equivalent of major rule?
65. Did petition on its face establish substantial likelihood that head of agency would not be able to make the findings required by §624?
66. Did agency correctly conclude that petition did not show substantial likelihood that guidance would have effect of a major rule?
67. Did agency correctly conclude that petition did not show substantial likelihood that agency would not be able to find that guidance document meets criteria of §624?
68. Did agency complete rulemaking within two years of determination to amend a rule pursuant to §623?
69. Did agency develop adequate regulatory flexibility analysis?
70. Is a cleanup a ''major environmental activity'' (will it exceed $10 million in costs, expenses, and damages)?
71. Did agency correctly conclude that construction had commenced on a significant portion of the cleanup activity?
72. Did the agency correctly conclude that it would have been more cost-effective to complete cleanup construction than perform a cost-benefit analysis and risk assessment?
73. Did agency correctly conclude that cleanup delays associated with development of cost-benefit analysis and risk assessment would have resulted in actual and immediate risk to human health or welfare?
74. Did agency prepare risk assessment for major environmental management activity in accordance with risk assessment provisions of S. 343?
75. Did agency prepare appropriate cost-benefit analysis for major environmental management activity in accordance with cost-benefit provisions of S. 343?
76. Did agency appropriately identify the reasonably anticipated probable future use of land and its surroundings affected by a major environmental management activity?
77. Did agency appropriately incorporate such reasonably anticipated probable future use of land and its surroundings in conducting a cost-benefit analysis of a major environmental management activity?
78. Did agency appropriately incorporate such reasonably anticipated probable future use of land and its surroundings in conducting a risk assessment of a major environmental management activity?
79. For actions pending or proposed within one year of enactment of bill, did agency use an appropriate alternative analysis to assess the costs and benefits and risks associated with a major environmental management activity?
80. Did agency adequately determine whether benefits of major environmental management activity justify costs?
81. Did agency adequately determine whether the activity employs flexible alternatives to the extent practicable?
82. Did agency adequately determine whether the activity adopts the least cost alternative of the reasonable alternatives?
83. Did agency correctly identify and sufficiently describe scientific, technical, or economic uncertainties or nonquantifiable benefits that make a more costly alternative cleanup activity appropriate and in the public interest?
84. Did agency sufficiently describe why such alternatives are appropriate and in the public interest?
85. Did agency sufficiently explain why any such alternative is the least cost alternative of the reasonable alternatives necessary to take into account uncertainties or nonquantifiable benefits?
86. Did agency correctly determine that cleanup activity is likely to significantly reduce risks addressed?
87. If uncertainties preclude such a finding, did agency adequately justify the cleanup activity?
88. Did agency correctly determine that a cleanup activity could not satisfy the cost-benefit decisional criterion applying the statutory requirements upon which the activity is based?
89. Did the agency correctly conclude that a risk assessment would not likely have an effect on the U.S. economy equivalent greater than $50 million/year?
90. Did the agency correctly conclude that a risk assessment for the issuance or modification of a permit meets the requirements of §633.
91. Did the agency correctly conclude that conducting a risk assessment would have been impracticable due to an emergency or health and safety threat likely to result in significant harm to the public or natural resources?
92. Is risk assessment related to rule authorizing a product's introduction into commerce?
93. Is risk assessment an exempt screening analysis?
94. Is screening analysis used as the basis for imposing restriction on previously authorized any activities?
95. Is screening analysis used to as the basis for a formal determination of significant risk from a substance or activity?
96. Does agency conduct risk assessments in manner that promotes informed public input into decision-making process?
97. Does the agency maintain appropriate distinction between risk assessment and risk management?
98. Did agency apply appropriate level of detail and rigor to risk assessment?
99. Did agency develop an appropriate iterative process for risk assessments?
100. Did agency correctly determine that additional data would significantly change the estimate of risk and the resulting agency action?
101. Is risk assessment based on best reasonably available scientific data and understanding?
102. Did agency appropriately analyze the quality and relevance of data used in risk assessment?
103. Did agency appropriately describe the analysis of the quality and relevance of the data used?
104. Did agency appropriately consider whether data were appropriately peer-reviewed or developed in accordance with good laboratory practices?
105. Does risk assessment adequately discuss conflicts among scientific data?
106. Does risk assessment include adequate discussion of likelihood of alternative interpretations of data?
107. Does risk assessment appropriately emphasize postulates representing the most reasonable inferences from supporting scientific data?
108. Does risk assessment appropriately emphasize data indicating greatest scientific basis of support for resulting harm to affected individuals?
109. Does agency appropriately assess whether foreign determinations of health effects values should be utilized in agency decisions?
110. Does risk assessment use site-specific information to maximum extent practicable?
111. Does risk assessment inappropriately rely on policy judgments or default assumptions?
112. Does risk assessment appropriately identify policy judgments used?
113. Does risk assessment appropriately describe scientific or policy judgments used?
114. Does risk assessment adequately explain the extent policy judgments have been validated by data?
115. Does risk assessment adequately explain the basis for choosing particular policy judgments?
116. Does risk assessment adequately identify and explain all reasonable alternative policy judgments that were not selected by agency for use in risk assessment?
117. Does risk assessment adequately explain sensitivity of conclusions to such alternative policy judgments?
118. Does risk assessment adequately explain rationale for not using such alternative policy judgments?
119. Does risk assessment inappropriately combine or compound multiple policy judgments?
120. Does risk characterization appropriately describe hazard of concern?
121. Does risk characterization appropriately describe populations or natural resources at risk?
122. Does risk characterization appropriately explain the exposure scenarios used in risk assessment?
123. Does risk characterization appropriately estimate population at risk?
124. Does risk characterization appropriately describe likelihood of different exposure scenarios?
125. Does risk characterization appropriately describe the nature and severity of harm that could plausibly occur?
126. Does risk characterization appropriately identify major uncertainties in each component of risk assessment?
127. Does risk characterization appropriately address the influence of each uncertainty on the results of the risk assessment?
128. Does risk assessment conclusion appropriately express overall estimate of risk as a range of probability distribution reflecting variabilities, uncertainties, and data gaps in analysis?
129. Does conclusion appropriately provide range and distribution of risks and corresponding exposure scenarios?
130. Does conclusion appropriately identify reasonably expected risk to general population?
131. Does conclusion appropriately identify risk to more highly exposed or sensitive subpopulations?
132. Does conclusion appropriately describe qualitative factors influencing range of possible risks?
133. Do scientific data and understanding permit relevant comparisons of risk?
134. If so, did agency appropriately place nature and magnitude of risks to human health, safety, and the environment in context?
135. Did agency appropriately describe substitution risks?
136. In reviewing petition for review of free-standing risk assessment, did agency correctly conclude that risk assessment or entry was consistent with risk assessment and characterization principles in S. 343?
137. In reviewing petition for review of risk assessment, did agency correctly conclude that risk assessment does not fail to take into account material new scientific information?
138. In reviewing petition for review of risk assessment, did agency correctly conclude that risk assessment would not have contained significantly different results if properly conducted pursuant to provisions of S. 343?
139. In reviewing petition for review of risk assessment, did agency correctly conclude that revised risk assessment would not provide basis for reevaluating an agency determination of risk that currently has an effect on the U.S. economy of $50 million/year?
140. Does consent decree imposing rulemaking obligations divest agency of disrection to respond to changing circumstances, make policy or managerial changes, or protect rights of third parties?

141. Did the agency appropriately apply a rule of reason in determining whether to add or delete a chemical from the Toxics Release Inventory?

142. In determining whether to add or delete a chemical from TRI, did the agency appropriately consider the levels of the chemical in the environment that might result from reasonably anticipated releases?

143. In an enforcement proceeding, did a defendant reasonably rely on and comply with a rule, regulation, adjudication, directive or order?

144. Was such reliance and compliance incompatible, contradictory, or otherwise irreconcilable with the rule, regulation or directive for which enforcement is sought?

Mr. GLENN. Mr. President, this is a list of 144 bases upon which a rule can be challenged using the arbitrary and capricious standard that you are talking about.

Mr. JOHNSTON. Well——

Mr. GLENN. These can still be challenged.

Mr. JOHNSTON. Let me ask my friend to answer this question: EPA does not do anything. It puts no rule up for review. What is your remedy if you are an aggrieved party, if you are outraged citizens, if you are millions of American citizens, what is your remedy? To come to Congress?

Mr. GLENN. Yes, that is the ultimate protection, Congress, where 80 percent of these things start to begin with, where the requirements are put in.

Mr. JOHNSTON. I tell my friend that the American public has come to Congress. That is what we are doing here today. That is what this is all about. EPA has reviewed its own rules and says they are not based on real risks, they are based on public perceptions of risk and we need to do something about it. Everybody says let us do something about it. And now that is where we are.

There was a 1987 study called ''Unfinished Business'' where EPA systematically ranked the seriousness of the various risks that it was addressing or could address. The report found that there was little correlation between the risk that the EPA staff judged as most threatening and EPA's program priorities. Instead, EPA found a correlation between EPA's priorities and public opinion on the seriousness of the various environmental threats. ''Overall, EPA's priorities appear more closely aligned with public opinion than with our estimated risk.''

Mr. President, these conclusions were confirmed in 1990 by EPA's Science Advisory Board, in its report entitled ''Reducing Risks.'' The report urged EPA to target its environmental protection efforts on the basis of opportunities for the greatest risk reduction.

So, Mr. President, I think we now have the picture. The Glenn-Chafee amendment allows aggrieved parties to come to Congress, and that is it. Other than trusting in the judgment—to use the words of the statute, ''the sole discretion of the head of the agency,'' that is it. You have the sole discretion of the head of the agency, and that is exactly what we have right now.

Mr. President, right now, we have the sole discretion of the head of the EPA. We have the sole discretion of OSHA and all these other places that are run amok. Listen to what EPA says about its own rules. This is not some right-wing interest group talking about how badly EPA is assessing its rules. This is EPA saying it. Its own Science Advisory Board confirmed it in 1990, and we are told, well, trust them. Let us continue to go with unfettered discretion, with ''sole discretion.'' Now, that is what Glenn-Chafee says—''sole discretion.''

Now, Mr. President, we have been on the floor for 6 days. This is the 6th day on this legislation, the 6th straight day going through all of these provisions and arguing about these provisions and all that. And we are told, well, leave it to the sole discretion of the agency head. And then, as for new rules, if it is implicitly—whatever that means, and I think it means whatever in the sole discretion of the agency head they want it to mean—you do not have to do for a new rule the cost-benefit analysis. By the way, you do not even have to justify the cost—that benefits justify the cost.

Mr. GLENN. If the Senator will yield, the Senator defends the petition process in the Dole-Johnston bill. On March 14, the Senator from Louisiana responded to a letter that Senators LEVIN, LIEBERMAN, and I had sent to him asking his opinion on these, because he has had a lot of experience in these areas. We asked him to comment on S. 291 and S. 343. He sent us back a very thoughtful and well-reasoned-out letter response of his views at that time. I say that within that letter—and I will not read the whole letter because it was rather lengthy—but in talking about the petition process, the Senator from Louisiana stated the following:

To help set priorities for the review, I prefer some sort of advisory committee to assist the agency head. I am very skeptical of the petition process, which is likely to skew the priorities, and I am strongly opposed to any judicial review of actions taken under a lookback provision.

It seems to me that is pretty clear as to what the thinking was in March. Further on down in another paragraph, it says:

The Dole bill, however, allows any person to petition for a cost-benefit analysis of an existing regulation. If the analysis shows that the regulation does not satisfy the decisional criteria of the bill (that is, that the benefits of the regulation outweigh the cost) the agency must either revoke the regulation or amend it to conform to the decisional criteria. Denial of the petition by an agency head is subject to judicial review.

Needless to say, I strongly disagree with this approach. Unless I am reading something wrong, the Senator from Louisiana is stating one thing in March and a different thing on the floor here today.

Mr. JOHNSTON. Mr. President, I appreciate that question.

This is the very provision that we accepted, the advice of Sally Katzen, who is head of OIRA, and other Democrats.

Frankly, I think we ought to have advisory boards. But the advisory boards were objected to by the Senator from Ohio, the Senator from Michigan, Senator LEVIN, and others, who said we should not have this advisory board, and it would clog up the thing.

I think advisory boards would be useful.

Mr. GLENN. Could the Senator tell me when he objected to that? I do not believe there was an objection to that.

Mr. JOHNSTON. I thought it was in our negotiating session. Does the Senator wish to get advisory boards back in?

Mr. GLENN. I do not know what happened in our session. There were so many things that occurred in those sessions. It would be hard to go back and recall everything that occurred.

Mr. JOHNSTON. The advisory boards, in my judgment, are useful, and I tried to sell advisory boards. I do not think they are central to the process, but if the Senator from Ohio thinks they are important, I will come back——

Mr. GLENN. I would be happy to talk about advisory boards. We might be able to get some wording here that would be proposed as an amendment here, and we would be glad to consider that if that is possible.

Mr. JOHNSTON. Under the original Dole amendment, people would be able to petition as often as they wished to. They would have an automatic judicial review of that.

Sally Katzen suggested—I think it was an excellent idea. I think the Senator carried forward some of the ideas with that, which was we have 180 days after the publication of the initial list within which to petition with a very high threshold. That is, we have to show a substantial likelihood that the existing rule does not meet the test. If you do not make the application during the 180 days, you cannot apply again for 5 years. This is only an every 5-year process.

The appeals from that are consolidated so that there is only one appeal, so that the very problems that I was talking about in my bill, that Sally Katzen was talking about in our negotiating session, were accepted on terms suggested by her.

It deals with that problem of agency overload and court overload. We did that. I think it was an ingenious suggestion that she made. We accepted it hook, line, and sinker. We said, ''Yes.'' That is the problem with this bill. It is hard to accept ''yes'' for an answer.

Mr. President, this bill, virtually everything, virtually all the major areas of opposition to this bill as suggested have been dealt with, and dealt with successfully.

Supermandate—that is, does this statute override any other underlying statutes? We, first of all, made it clear in the Dole-Johnston original bill and Senators came back and said it is not clear. Well, we made it absolutely clear by stating it again on terms agreed to

by both the left and the right of this Chamber. Supermandate is solved.

Judicial review, I submit, is solved. The language is clear.

The $100 million threshold, that is a big thing. We had the amendment here and we passed it. It is now part of the process.

The petition process, we accepted the Katzen suggestion, wholly and completely, and it is now incorporated. Now, they may want more. Was it Samuel Gompers, the labor leader, when they asked, ''What does labor want?'' and he said, ''More, more, more.'' Whoever said it, they should have said it for this bill. Because they come in and ask for things, and we do them, and somehow it is not enough.

Effective day—we dealt with the effective date. The problem was we have all the ongoing rules that have to be redone. We say, OK, if you have a notice of proposed rulemaking out by April 1 of this year, you do not have to go back and redo any cost-benefit or risk assessment. You are home free.

Now, I think that solves the problem because if you just started with a notice of proposed rulemaking since April 1, you got plenty of time to incorporate that in your bill.

Superfund—Mr. President, one of the toughest issues in this bill as to which there was a huge amount of disagreement, I very strongly sided with the Senator from Ohio in thinking that all of this environmental cleanup, all of these Superfund provisions ought to be out of here. And we accepted. As a matter of fact, we did it by unanimous consent. We probably should have had a vote to have seared that into the memory of our colleagues, but at least we did it. Superfund is gone. Sayonara.

The sunshine amendment—the Senator from Ohio suggested it. We accepted it. It is done. Now, it is, I am sure, not enough. I am sure that there is not enough we can do to satisfy some people, other than to make this bill solely in the discretion of the agency heads, because that in effect is what Glenn-Chafee does. Solely in the discretion, not reviewable by the court, do it if you want to, but if you did not want to, do not bother.

And you have plenty of redress by coming to the Congress.

Mr. GLENN. Would the Senator yield? That is what the Senator argued for in his letter.

Mr. JOHNSTON. Not that, no, indeed.

Mr. GLENN. Yes. I read it into the letter a little while ago. I will ask anybody to reread that to see if this is not a change in position.

Mr. JOHNSTON. I have never said this ought to be consensual, that it ought to be solely in the discretion of the agency head. Never have said that. Never believed that. It simply is not so.

I think we have delivered very, very well on this letter of mine.

Mr. GLENN. This position, I submit to my friend from Louisiana, is 180 degrees opposed. ''To help set priorities for the review, I prefer some sort of advisory committee to assist the agency head. I am very skeptical of a petition process which is likely to skew the priorities, and am strongly opposed to any judicial review of actions taken under a lookback provision.''

Now, that is diametrically opposed to what the Senator is talking about here today. Further, if I might continue just for a second here, I think in all of our best recollection of those here who were in some of those negotiating sessions, Miss Katzen never supported the petitioner a right to have a major rule reviewed in 3 years. That is way too short and forces an agency to set priorities by petition and not by what is most important or what is most pressing.

In addition, Dole-Johnston also allows for interlocutory appeal of three different issues. No. 1, a major rule. No. 2, does it require risk assessment? No. 3, does it require regulatory flexibility analysis? It allows judicial review in the middle of the rulemaking.

Mr. JOHNSTON. If the Senator would allow me to answer that, first of all, on the reg flex, I did not support the reg flex. A big bipartisan vote of 58 votes approved reg flex.

I really do not think it is workable. But the two Senators from Georgia, NUNN and COVERDELL, have indicated that they would work on this and try to relieve the burden.

Let me tell the Senator from Ohio, that is not the fault of this Senator. I suspect that if by any chance the Glenn-Chafee amendment got adopted, that it would have the Nunn-Coverdell amendment bit. Do not criticize Dole-Johnston for having Nunn-Coverdell. I was not for it, and the Senator would get it if he had it.

With respect to the interlocutory appeal on the size of the rule, whether it is a $100-million rule or whether it is one that requires a risk assessment because it pertains to health, safety, and the environment, I had said all along that was a proposal which I put in. It was not in the original Dole amendment. It was meant to give agency heads flexibility and help. And if that is a real problem, it can come out. I think those who criticize the interlocutory appeal do not understand it. I mean, it is meant so agency heads will know at the end of 60 days whether they are going to have a challenge on whether it is a major rule.

The problem you have now—for example, we had hearings on NEPA. If the Senator would follow through with me on this, we had hearings on NEPA and we found that EPA is spending $100 million a year on NEPA studies. As the Senator knows, an environmental impact statement is much more detailed and, in turn, much more expensive than an environmental impact assessment. But they always do an environmental impact statement rather than an assessment because they do not want to wait until the end of all this study and rulemaking and what have you and have to go back and redo it.

That was, frankly, the idea of the interlocutory appeal. So that, if you do not complain about the size of the rule in the first 60 days, then that is forever sealed in. And if they do complain and do make the appeal, the agency head can moot the appeal by simply going back and agreeing to do the risk assessment and cost-benefit analysis. It is simply meant to help them.

But if that is a problem, the whole thing can come out. Let me just make a remark or two and then I will yield the floor.

Mr. ROTH. Will the Senator yield for a question?

Mr. JOHNSTON. Yes, of course.

Mr. ROTH. Am I correct in understanding that I believe every President since President Ford has required a cost-benefit analysis to be made, but, despite that general requirement through Executive order and otherwise, it has not been adhered to? Is that correct?

Mr. JOHNSTON. There has been a risk assessment rulemaking rule out there—Executive order I should say—under every President since President Ford.

By the way, I have a copy of it here. The problem is that it is consensual as well, and it is generally ignored, as my friend suggests.

Mr. ROTH. That is the point I am trying to make. It is consensual under current conditions, and the Glenn-Chafee would make no change, it would continue to be consensual. Is that correct?

Mr. JOHNSTON. It would even more clearly be consensual under those because they make sure, and they say, ''in sole discretion of the agency head,'' and then they go back, under section 625, and ensure that there is no appeal from the exercise of sole discretion. I do not know how you could otherwise have an appeal from the exercise of sole discretion, but they make sure that there is no appeal. It is nonenforceable. It is sort of the honor system, or I should say the buddy system, the bureaucratic buddy system.

Mr. ROTH. So, in a very real way, the adoption of the Glenn-Chafee legislation would mean no significant change, at least as far as cost-benefit is concerned?

Mr. JOHNSTON. The Senator has put it very, very well. No significant change. And your recourse, according to the Senator from Ohio, is to come to Congress.

Mr. ROTH. As the distinguished Senator from Louisiana already pointed out, that is what we are doing now. It is a fact—is it not a fact that the Vice President, the head of OIRA, and others, have said that there are bad rules on the books and something needs to be done? Is that not correct?

Mr. JOHNSTON. That is exactly correct. But they say, trust us, we will do them in our sole discretion.

Mr. ROTH. But that is the problem; it has not been done. Is that not correct?

Mr. JOHNSTON. That is, even according to EPA's own studies. They had one study in 1987 that determined that risks conformed—the EPA study in 1987 entitled, ''Unfinished Business'' says that they ''systematically failed to properly rank risks.'' They ranked them according to public opinion rather than science.

Then they came back 3 years later, in 1990, had another study from EPA's Science Advisory Board, and said they were continuing to do the same thing.

I submit they are continuing to do the same thing today. And this same crowd is coming in and saying, trust us, we are doing it right, and no change needs to be made.

Mr. ROTH. As I understand it, and of course none of us have had a chance to review that carefully, the new language of the Glenn-Chafee bill—but essentially what they have done is taken the teeth out of the legislation that was reported out by the Governmental Affairs Committee?

Mr. JOHNSTON. That is exactly right. The Roth bill, which came out unanimously, out of Governmental Affairs, had a lot of teeth. The Senator and I have talked about that. My own view was I liked some of the teeth. I thought some of the other teeth were too sharp.

Mr. ROTH. The Senator is partly right.

Mr. JOHNSTON. But no need to worry, all of those teeth are gone. You do not even have false teeth here.

Mr. ROTH. So this, in a sense, would be an exercise in futility.

Mr. JOHNSTON. This is a waste of time. If you want to kill this bill, enact this Glenn-Chafee amendment, beat your chest, feel good about it. It has risk assessment in the title of the bill, but it amounts to nothing, zero.

Mr. ROTH. I congratulate the distinguished Senator from Louisiana for his very penetrating analysis.

Mr. JOHNSTON. I thank my colleague and yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, this was an interesting discussion. It shows the complexities of this legislation and why we should not be rushed on the floor of the Senate putting it into effect. We should be considering all these things and all the legal ramifications of it in every respect.

I come back, though, that if the Agency passes something that is considered to be not OK, or tries to put something into effect, that anyone can petition the Agency and say, ''We think this should go back to Congress,'' or notify their Congressman, notify their Senator, we can call it back.

I do not see yet why that is not—that is where the responsibility lies, is right here. We are the ones who passed the original legislation. What we have done is, for the first time, put into play a specific arrangement. We are detailing it in legislation. We are inviting people to watch what goes on in the agencies and say we will bring it back.

The Senator from Louisiana is absolutely correct. We always have the right in Congress to do something like this if we want to pass separate legislation. But that takes a lot of time. It is time consuming, it could go on for a whole session of Congress. It could go on for another year. What we did is provide, in both pieces of legislation, time restraints by which Congress has to complete its action. In other words, any authorizing committee can call back a rule or regulation for reconsideration before it goes into effect. I really do not see how there could be a better protection than that. I do not know what else there is that would be needed.

Let me read some things into the RECORD that apply to this judicial review:

JUDICIAL REVIEW PROVISIONS IN GLENN-CHAFEE AND DOLE-JOHNSTON VERSIONS OF S. 343—A COMPARATIVE APPROACH

1. RULEMAKING FILE REQUIREMENTS AND REVIEW

The Dole-Johnston bill amends the A.P.A. to add elaborate rulemaking file requirements to all notice-and-comment rulemaking; these sections contain their own confusing judicial review provision [553(m), p. 12] and would encourage lawsuits over the adequacy of the file and whether items were placed in the file as quickly as possible. Additionally, the Dole-Johnston bill would change the standards of review for rules issued under notice-and-comment; it would add 5 U.S.C. §706(a)(2)(F) to require that the factual basis for a rule have ''substantial support'' in the rulemaking file. See discussion below.

The Glenn-Chafee bill does not include these troublesome provisions.

2. JUDICIAL REVIEW OF SCHEDULING REVIEW/LOOKBACK

Section 623(e) (p. 30) of the Dole-Johnston bill provides for judicial review of agency non-compliance with the process for scheduling of review of existing rules. However, the section does not clearly limit judicial review to only the reasonableness of the schedule. The scope of review is broad—i.e., ''agency compliance or noncompliance with the requirements of this section'' and review exists ''notwithstanding section 625.'' Review is limited to the D.C. Circuit Court of Appeals. Review of final agency action must be filed within 60 days of publication of the final rule. However, the section does not preclude interlocutory review.

Section 625(c) of the Glenn-Chafee bill (p. 18) provides for judicial review of the agency regulatory review but precludes review of agency decisions whether to place a rule on the schedule and the deadlines for completion.

3. REVIEW OF DECISION TO ''SUNSET'' RULE

Section 623(g)(3) (p. 33–34) of the Dole-Johnston bill grants interested parties the right to petition the D.C. Circuit Count of Appeals to extend the period for review of a rule up to two years and to grant equitable relief to prevent termination where, inter alia, termination of the rule would not be in the public interest.

The last sentence of section 623(h) provides that the decision of an agency to not modify a major rule ''shall constitute final agency action for the purposes of judicial review.'' Section 623(j)(2) similarly states that failure to promulgate an amended major rule or to make decisions by the date required shall be considered final agency action.

Under the Glenn-Chafee bill, rules would not automatically ''sunset.'' Instead, the agency would be required to publish a notice of rulemaking to terminate a rule. §625(e)(1)(C)(iv).

4. JURISDICTION AND JUDICIAL REVIEW

Clarity of limitation on judicial review.—Section 625(a) and (b) of the Dole-Johnston bill (p. 38) affirmatively grant jurisdiction to review ''any claims of noncompliance with this subchapter and subchapter III.'' While compliance is subject to judicial review ''only in accordance with this section,'' subsection 625(d) arguably permits broad judicial review.

By contrast, the Glenn-Chafee bill clearly states there is no judicial review except as provided therein. §623(a), p. 13. Section 623 of the Glenn-Chafee bill is very clear concerning what is reviewable and what is not.

Procedural errors.—Section 625 of the Dole-Johnston bill is unclear as to whether procedural errors are reviewable. It states that ''failure to comply'' may be considered by the court solely to determine ''whether the final agency action is arbitrary and capricious or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise required by law.'' 625(d), p. 39

The use of the words ''failure to comply'' in at least three places in section 625 suggests procedural errors are reviewable.

The limitation of review to the ''arbitrary and capricious'' or ''abuse of discretion'' test may not be sufficient to keep courts from reviewing alleged agency non-compliance just as they otherwise would under the A.P.A. That was the view of one court in a case where Congress limited review of agency procedural error to those which rendered the agency action arbitrary and capricious. That court had difficulty understanding the limitation as violation of procedure is often regarded as rendering the action arbitrary and capricious. *Small Refiner Lead Phase-Down Task Force* v. *U.S. E.P.A.*, 705 F.2d, 521 (D.C. Cir. 1983). See also, *Motor Vehicle Mfrs. Assn. of U.S.* v. *E.P.A.*, 768 F. 2d 385 (D.C. Cir. 1985) (statutory test of action in excess of statutory authority same standard as arbitrary and capricious).

The Glenn-Chafee bill, by contrast, makes it clear that courts are not to review the underlying steps and procedures leading up to the cost-benefit analysis and risk assessment. Section 623(d) expressly states that ''. . . the court shall not review to determine whether the analysis or assessment conformed to the particular requirements of this chapter.'' §623(d), p. 14. The Glenn-Chafee bill would permit the court to consider the actual documents produced by the agency to evaluate cost-benefit analysis and risk assessment in determining the reasonableness of the agency action but not to permit review of the underlying steps to development of the risk assessment or cost-benefit analysis.

Judicial ''second-guessing'' of agency judgment and scientific expertise The Dole-Johnston bill creates great risk that courts will second guess agency judgments and scientific determinations which go into the cost-benefit analysis, risk assessment, and application of the prescriptive decisional criteria.

The Dole-Johnston bill contains many prescriptive requirements which tell agencies what they must consider and what they cannot. However, many of these factors are very difficult in application. Yet consideration of factors Congress has decided are not to be considered has been cited as a basis for reversal under arbitrary and capricious review.

Citizens to Preserve Overton Park v. *Volpe*, 401 U.S. 402, 416 91 S. Ct. 814, 823, 28 L. Ed. 2d 136 (1971).

S. 343 turns administrative law on its head if it takes away agency's ability to make policy choices and to have those upheld so long as they are reasonable and consistent with the statute being applied. See cases cited in *Small Refiner Lead Phase-Down Task Force*, 705 F. 2d at 520. If Congress takes away an agency's discretion to make policy choices, then special interests challenging a rule will argue that an abuse of discretion standard permits the court to second-guess the agency's decision as to what is a ''policy judgment'' and what is ''scientific understanding.''

Courts are not situated to ''second-guess'' the prescriptive requirements of the Dole-Johnston bill. Courts are not well situated to review the underlying basis of cost-benefit analyses and risk assessments against the prescriptive standards of the bill.

''. . . the crowded states of judicial dockets offers a highly practical reason why judges will not, and probably should not, devote the considerable time and effort needed to review a several-thousand-page agency record, informed by a thorough understanding of the substance of risk-related regulatory problems, in order to see whether or not that agency determination was arbitrary.''

Justice Breyer, Breaking the Vicious Circle: Toward Effective Risk Regulation (Cambridge, Mass.: Harvard University Press 1973), pp. 58–59 (describing why courts are not institutionally suited to resolve risk issues).

Prejudicial error [Note: Neither bill contains a prejudicial error provision in this section. However, Senator Johnston says concerns with the decisional criteria and judicial review provisions are solved by the prejudicial error test in 5 U.S.C. 706. This is not an adequate protection.]

The problems with judicial review of the many prescriptive requirements of the Dole-Johnston bill are also not cured by the ''prejudicial error'' test in 5 U.S.C. §706. That test, which is unchanged from the current APA, has been described as requiring remand if the court ''cannot be sure that under the correct procedures the Agency would have reached the same conclusion . . .'' *Weyerhaeuser Co.* v. *Costle*, 590 F.2d 1011, 1031 (D.C. Cir. 1978). That case invalidated a pollution emission limitation rule for failure to provide adequate notice for comment on agency data even though petitioner could not show that recomputation of the data would have made the process so costly as to invalidate the limitation as an abuse of discretion.

Clogging the Courts.—The language of section 625 will encourage years of litigation before even the question of what is reviewable is resolved. This bill gives regulated industry many hooks to delay rulemaking and then to challenge the final result. If those steps are subject to judicial review, there will be every incentive to stop regulation through complex and lengthy judicial review proceeding. When this is combined with the increased time and cost of rulemaking under this bill, the result may be gridlock. This frustration of law is not a desirable goal.

Judicial review of whether the agency chose the ''least cost alternative,'' given the great differences in underlying data, will generate challenges.—The Dole-Johnston bill takes away agency discretion and mandates that all costs and benefits be turned into one number and that the agency select the ''least cost alternative'' of those available under 624 (b) or (c). Yet some say that cost-benefit analyses may be off by a magnitude of hundreds. This makes it difficult for agencies to achieve any certainty concerning application of cost-benefit analyses. If agencies must constantly be looking over their shoulder at the possibility of judicial review, it is clear this will provide many opportunities for challenges to rules by the regulated industry.

By contrast, the Glenn-Chafee bill provides a range of discretion to the agency decisionmaker in section 622(f) and is much more clear that the decisional criteria do not alter statutory criteria for rulemaking.

5. INTERLOCUTORY REVIEW OF DETERMINATION OF ''MAJOR RULE''

The Dole-Johnston bill permits interlocutory appeal of an agency decision that a rule is not a major rule or is not subject to risk assessment requirements. §625(e) p. 39.

The Glenn-Chafee bill requires ''a clear and convincing showing that the determination is erroneous in light of the information available to the agency at the time the agency made the determination. §623(c). It does not authorize interlocutory review.

6. DOLE-JOHNSTON AMENDS THE APA STANDARDS OF JUDICIAL REVIEW FOR ALL AGENCY RULES—GLENN-CHAFEE DOES NOT

Factual basis for rules—5 U.S.C. §706(a)(2)(F)

The Dole—Johnston bill amends 5 U.S.C. 706(a)(2) by adding (F) which requires courts to set aside agency action, findings and conclusions found to be ''without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, as distinguished from the policy or legal basis, of a rule adopted in a proceeding subject to section 553. . .''

The Dole-Johnston version of S. 343 also requires the final notice of rulemaking to explain how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file. 5 U.S.C. §553(g)(4), p. 8). The ''rulemaking file'' must identify factual and methodological material that pertains directly to the rulemaking and was considered by the agency or submitted to or prepared by or for the agency in connection with the rulemaking. §553(j)(3)(d), p. 10.

Position: The standards for judicial review in the APA should not be changed. Agencies should be able to rely on their knowledge and expertise in informal notice-and-comment rulemaking. Review should be on an arbitrary and capricious standard, not require that the factual basis have ''substantial support'' on a limited record. This new standard will create much litigation in an established area of the law.

This standard may encourage judicial intrusion into agency's scientific determinations. In *Corrosion Pipe Fittings* v. *E.P.A.*, 947 F.2d 1201, 1213–1214 (5th Cir. 1991), the court held that the ''substantial evidence'' test used in the Toxic Substances Control Act for notice-and-comment rulemaking was a more rigorous standard than the ''arbitrary and capricious'' standard applied now to informal rulemaking and showed that Congress wanted the courts to scrutinize the agency's actions more closely. The Court then proceeded to apply close scrutiny to the agency's cost-benefit calculations and invalidated the asbestos rule that had taken ten years to develop. 947 F. 2d at 1223–1230.

New section 706(a)(2)(F) requires the agency to amass a record for potential litigation in every case. It calls into question the principle that an agency can utilize its knowledge and expertise.

It gives well-healed parties the opportunity to skew the results on judicial review by salting the rulemaking file with comments and materials which support their position. Even in cases where the agency position has an adequate factual basis in scientific literature, this standard might require the agency to list all sources in the file or not be able to later rely on them if a challenge is raised on judicial review.

7. MULTIPLE OPPORTUNITIES FOR REVIEW

Dole Johnston contains other provisions permitting judicial review. Glenn-Chafee contains other provisions making it clear that judicial review is not available. See, §636(d), p. 40, no judicial review of risk assessment guidelines' development, issuance, or publication; §646 (p. 48), no judicial review of executive oversight authority; §6(f), p. 70, no judicial review of study of comparative risk; §6(f), p. 78, no judicial review of regulatory accounting.

8. GLENN-CHAFEE REDUCES UNCERTAINTY AND INCREASES DISCRETION AND THEREBY REDUCES OPPORTUNITIES FOR SUCCESSFUL CHALLENGES TO AGENCY RULES

An example where Glenn-Chafee gets rid of a problem is the effective date provision, §8, p. 70. By making it clear that the section does not apply to pending rules and by providing a reasonable grace period, this eliminates a troublesome problem for pending rules.

9. REGULATORY FLEXIBILITY

Glenn-Chafee eliminates some of the problems with regulatory flexibility under the Dole-Johnston bill. Section 611 (p. 48) avoids inconsistent statutes of limitation where that for the underlying rule is less than 1 year. It provides that court may stay the rule if a failure is not corrected within 90 days but does not automatically terminate a rule if not corrected in that period. Its judicial review standard is more limited, and it does not contain the decisional criteria of the Dole-Johnston bill.

Mr. President, I think this indicates to all who might be paying attention to this debate in the Chamber today how very, very complex and how far-reaching some of these decisions are. It is not something we can rush through. I know it has been stated we want to move forward as rapidly as possible, and I agree with that. But I also want to make sure that while we are setting up a new regulatory review process, we at the same time make every protection for whatever existing law deserves that kind of protection, and before we make changes that we make very certain we do it in a way which protects the health and benefit and safety of the American people.

Mr. President, I would go further in talking a little bit more about the cost-benefit analysis and the decisional criteria.

Glenn-Chafee has no ''decisional criteria requiring agencies to pass cost-benefit tests before issuing a rule.''

Our response to some of the charges under that are, No. 1: Both the Glenn-Chafee and Dole-Johnston substitutes require agencies to do the same type of cost-benefit analysis. We believe in making agencies do such analyses to better understand what the costs and benefits are of a rule. There is no problem with that with either bill. The differences, though, between our substitutes is how they use cost-benefit analysis.

Glenn-Chafee uses cost-benefit analysis as a tool and not just as a final decisional criteria. There is no language in the Glenn-Chafee substitute that states, ''An agency shall not promulgate a rule,'' unless it passes a

cost-benefit test. Glenn-Chafee requires agencies to provide an explanation and certification of whether, one, benefits of the rule justify the cost and, two, the rule achieves the objectives of the rulemaking in a more cost-effective manner than the alternatives.

If it cannot make such a determination, it has to explain why not. The Dole-Johnston substitute has decisional criteria that prohibit using a rule unless, one, the benefits justify the costs, the rule uses flexible alternatives to the extent practicable, the rule is the ''least-cost alternative'' that satisfies the objectives of the statute, and if a risk assessment is required, the rule is likely to ''significantly reduce the risks addressed by the rule.''

Why the decisional criteria are problematic: No. 1, cost-benefit analysis is an imprecise science. Cost and benefits are hard to quantify and are loaded with assumptions, and some economists might even say, tell me what answer you want and I will give you the right numbers for costs and benefits.

Agencies should not be required to decide whether or not to promulgate a rule based just on a cost-benefit test.

No. 2, another reason why decisional criteria are problematic: Agencies would have to choose the least-cost alternative. We should require agencies to choose the most cost-effective rule, not just the cheapest. The distinguished Senator from Louisiana has pointed to the out for agencies. They can choose something other than a least-cost solution in the event of ''scientific, technical or economic uncertainties or nonquantifiable benefits to health, safety or the environment.''

But what if there are certain quantifiable benefits? Agencies would still have to put out the least-cost rule, and that just makes no sense. Even if something is more cost-effective, beneficial to the people of this country, we still have to go with whatever the alternative was that was solely least cost. That makes no sense.

Mr. ROTH. Mr. President, will the Senator yield?

Mr. GLENN. I am almost finished. Another minute or two and I will be glad to yield.

No. 3, agencies must prove that a rule significantly reduces risk. The FAA tells us, however, that some of their safety rules, while quite important and quite effective, may not pass the ''significant'' test.

No. 4, if agencies determine that the benefits of a rule do not justify its costs, that rule should come back to Congress. And that is a key element of this; that rule should come back to Congress if the agency determines that the benefits do not justify its costs. Agencies should not be the ones to decide whether to issue a rule based on a cost-benefit test. That rule should come back to Congress to decide whether a rule should go forward or not, and that is provided. Congressional veto, as it is called, makes more sense than decisional criteria. It does not hand over Congress' responsibilities to the agencies.

Mr. President, I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from Delaware.

Mr. ROTH. Mr. President, I say to my distinguished friend and colleague from Ohio that I have been in negotiations and discussions with representatives of his side of the aisle in an effort to revise the decisional criteria with respect to the least cost. I am sympathetic to the concept of utilizing a test of cost-effectiveness or greater net benefit to avoid some of the problems raised in his discussion of this section.

I wonder if the distinguished Senator is willing to proceed along those lines at this time in developing such an amendment?

Mr. GLENN. Yes. As I understand it, what the Senator was proposing was that there are some negotiations going on in this regard, and we would be willing to proceed with further negotiations with regard to cost effective as opposed to least cost; is that correct?

Mr. ROTH. That is correct.

Mr. GLENN. Certainly, I always want to negotiate on these things and see what we can come out with.

Mr. ROTH. I think it important we proceed on this matter, because it is an important one, and that we proceed as rapidly as possible. To be candid, I am disappointed that we have not been able to address this problem on the floor.

Mr. GLENN. I think what the distinguished Senator from Delaware is addressing is one of the most important items in all of this legislative package. I think it is important that we get that one ironed out, because it is a major issue in how we deal with regulatory reform. I agree with him.

Mr. ROTH. I thank the distinguished Senator for his comments.

Mr. President, I rise to call upon my colleagues to support meaningful regulatory reform. I want to explain why I believe that the Dole-Johnston compromise, S. 343, is the key to changing the status quo, and why the Glenn substitute is not the solution to reforming the regulatory process.

I believe that regulatory reform is one of the most important issues we face. The reason is that, overall, Government regulation has an enormous impact on our lives—for better or for worse. If regulations are well-designed and implemented, they can do a lot of good—by making a cleaner environment, safer workplaces, and safer products. But, at the same time, regulations can be very costly, and, if poorly designed, too costly—by raising prices, taxes, and paperwork; diminishing wages; eating up time; and wasting opportunities to do better things with our limited resources. The cumulative regulatory burden costs about $600 billion per year. I believe that, if this massive regulatory machine were retooled, it could do much more good at less cost.

Most experts who have examined the regulatory process, regardless of background or political bent, have concluded that the regulatory process is seriously out of whack and must be reformed. Few if any of my colleagues would dare to say publicly that we should be happy with the status quo.

So the question is, why is there so much controversy about the S. 343? The answer is simple—it is very hard to change the status quo in a significant way. It is a Herculean task to reform one of the most untamed frontiers of big Government—a massive regulatory machine that costs the average American family about $6,000 per year.

That explains why an earlier attempt at regulatory reform, S. 1080, which passed the Senate 94–0 in 1982, was killed in the House. And that explains why people are accusing supporters of S. 343 of wanting to expose the public to tainted meat, breast cancer, and contaminated drinking water. None of this is remotely true, and it does not belong on the Senate floor.

We wasted days last week on meritless arguments that S. 343 needs specific exemptions for meat inspection rules, mammography rules, and so on. The fact is, these arguments got a lot of press, but such exemptions were not needed. The Dole-Johnston compromise has a clear exemption for threats to human health and safety, as well as other emergencies.

In fact, the Glenn bill itself does not have such exemptions, because, as anyone recognizes who knows how these bills work, such exceptions are not needed.

The truth is, if you compare the Dole bill and the Glenn bill section by section, they look a lot alike. At bottom, there are only a few key differences. But these few differences are critical to effective regulatory reform.

First, meaningful regulatory reform must change future rules. The key to ensuring that new rules will be efficient and cost-effective is to have an effective cost-benefit test.

The Dole bill has a focused cost-benefit test. The decisional criteria in section 624 ensures that the benefits of a rule will justify its cost, unless prohibited by the underlying law authorizing the rule. Section 624 is not a supermandate; it does not trump existing law. It simply tells the agency, if possible and allowed by law, to issue regulations whose benefits justify their costs. That is plain common sense.

In contrast, the Glenn bill has no cost-benefit decisional criteria. The bill requires that a cost-benefit analysis be done, but the bill does not require that the cost-benefit analysis be used or that the rule will be affected by the cost-benefit analysis.

The agency only has to publish a determination whether the benefits of a rule will justify its costs and whether the regulation is cost-effective. But the Glenn bill does not push regulators to issue rules whose benefits actually do

justify their costs. I have always believed that an effective regulatory reform bill should have a stronger cost-benefit test.

Some of my colleagues, including Senators GLENN and LEVIN, have complained repeatedly about the least cost component of the decisional criteria. Section 624 of S. 343 says, whether or not the benefits of a rule can justify its costs, the agency should select the least cost alternative the achieves the objectives of the statute.

I think there is some merit to the concern that the least cost standard is too limited. If a rule costs a little more than the least cost alternative but provides much greater benefits, I believe that the agency should pick the much more beneficial rule—even if the benefits are quantifiable or are not environmental, health or safety benefits. Why not? Why not spend a little more to get much greater benefits for the public?

Yet, while I share the concerns of many of my colleagues, I have not been able to work out a solution. For weeks, I have tried to work out two solutions—a most cost-effective test or a greater net benefits test—with my other colleagues. I believe that either test is far better than the least cost test with its vague exception for certain nonquantifiable benefits. Yet, we have made no progress, even though proponents of the substitute continue to complain about the least cost standard. I think it is time we worked this out in a bipartisan fashion.

Now, I want to return to a second point about regulatory reform: effective regulatory reform cannot be prospective only; it must look back to reform old rules already on the books. The Dole-Johnston compromise contains a balanced, workable, and fair resolution of how agencies should review existing rules. Agencies may select for themselves any particular rules that they think need reexamination, while allowing interested parties to petition the agency to add an overlooked rule. To ensure that only a limited number of petitions will be filed, S. 343 limits petitions to major rules and sets a high burden of proof—petitioners must show a substantial likelihood that the rule could not satisfy the cost-benefit decisional criteria of section 624.

This is an efficient and workable method to review problematic rules.

The Glenn substitute, on the other hand, makes the review of agency rules a voluntary undertaking. There are no firm requirements for action—no set rules to be reviewed, no binding standards, no meaningful deadlines. The Glenn substitute simply asks that, every 5 years, the agencies issue a schedule of rules that each agency in its sole discretion thinks merits review. It does not require any particular number of rules to be reviewed. And, if someone asks the agency to review a particular rule, there is no judicial review of a decision declining to place the rule on the schedule.

Moreover, there is no judicial review of deadlines for completing the review of any rules. No matter how irrational a rule is, no matter how many people it is burdening, an agency does not have to review it. If the agency happens to put the rule on the schedule, nothing prevents the agency from procrastinating for 11 years. Again, the only deadline is a modest 11-year deadline for reviewing the rule.

The third point I want to emphasize is that effective regulatory reform must be enforceable to be effective. That means there has to be some opportunity for judicial review of the requirements of the legislation, just as there is with almost any law Congress passes. S. 343 strikes a balance by allowing limited, but effective, judicial review. I should note at the outset that S. 343 has been mischaracterized as a lawyer's dream and a litigation morass. In fact, S. 343 provides less judicial review than is normally provided for any law that Congress passes.

S. 343 carves away from the standard level of judicial review provided by the Administrative Procedure Act, which has existed for almost 50 years. The limited judicial review provided by S. 343 will help discourage frivolous lawsuits, and that is why S. 343 has limited judicial review. At the same time, it does allow an agency to be held accountable for complying with the major requirements of the bill.

An agency's compliance or noncompliance with the provisions of S. 343 can be considered by a court to some degree. The court can, based on the whole rulemaking record, determine whether the agency sufficiently complied with the cost-benefit analysis and risk assessment requirements of S. 343 so that the rule passes muster under the arbitrary and capricious standard. The arbitrary and capricious standard is very deferential to the agency. A court would uphold the rule unless that agency's cost-benefit analysis or risk assessment was so flawed that the rule itself was arbitrary and capricious. The court would not strike down a rule merely because there were some minor procedural missteps in the cost-benefit analysis or risk assessment.

In contrast, the Glenn substitute, as now redrafted, does not permit meaningful judicial review of the risk assessment or cost-benefit analysis. The Glenn substitute only requires a court to invalidate a rule if the cost-benefit analysis or risk assessment was not done at all. But the Glenn substitute does not really allow the court to consider whether the cost-benefit analysis or risk assessment was done properly. Indeed, Senator GLENN has weakened the language originally in his bill so that now substantial portions of his bill are irrelevant to the extent that a court could not require the agency to perform the cost-benefit analysis, risk assessment, or peer review in the manner prescribed by the bill.

Compliance with cost-benefit analysis and risk assessment requirements of the bill would be optional by the agency, the same way it is optional for them to comply with the Executive order that now requires these analyses.

Senator GLENN has claimed that his bill is essentially the same as S. 291—the regulatory reform bill I introduced in January and which received the bipartisan support of the Committee on Governmental Affairs. Although the original Glenn bill was similar to the Roth bill, the current Glenn substitute seriously differs from the Roth bill. For example, Senator GLENN has seriously weakened the review of rules provision.

The Roth bill required agencies to review all major rules in a 10-year period, with a possible 5-year extension, or the rules would sunset, or terminate. The revised Glenn substitute lacks any firm requirement about the number of rules to be reviewed.

Worse still, Senator GLENN has weakened the judicial review provision that was in the Roth bill and that originally appeared in the Glenn bill. Section 623(e) of the Roth bill and the original Glenn bill stated that the cost-benefit analysis and risk assessment ''shall, to the extent relevant, be considered by a court in determining the legality of the agency action.''

That meant that the court should focus on the cost-benefit analysis and risk assessment in determining whether the rule was arbitrary and capricious. Now, the Glenn substitute strikes that language. The Glenn substitute merely asks the agency do the cost-benefit analysis and risk assessment, but the agency can do a sloppy job. The agency also does not have to act upon the analyses and issue a rule whose benefits justify its costs. In fact, the agency simply can ignore the cost-benefit analysis. And nobody can do much about an agency that is doing a bad job. For a reviewing court, the analyses are just some more pieces of paper among the many thousands of pieces of paper in the rulemaking record.

The court does not have to focus on the cost-benefit analysis in determining whether the rule makes sense. Mr. President, that is not real regulatory reform. That is protecting the bureaucracy at the expense of the public.

I should also mention that the Glenn bill seriously weakens the risk assessment provisions of the Roth bill. The Glenn substitute significantly carves back on the number of agencies and programs that would have to comply with the risk assessment requirements. Moreover, the risk assessment language itself is weakened. As just one example, section 634(c)(1) of the Glenn language reverses the standard interpretation of how defaults should be used. The substitute relies on a minority comment in the National Academy of Science report, Science and Judgment. That is, the Glenn substitute

prefers default assumption when relevant data is available. That is not what good scientists would do. And that is not what the majority of the National Academy would recommend.

Finally, Senator GLENN has weakened the definition of ''major rule.'' There are no narrative provisions under which OMB could list certain problematic rules as major rules subject to full analysis.

Now, as I mentioned, if you compare S. 343 with the Glenn substitute, you would see that, section-by-section, they look similar. Both have provisions for cost-benefit analysis, risk assessment, review of existing rules, comparative risk analysis, market mechanisms and performance standards, reform of the Regulatory Flexibility Act, congressional review of rules, and regulatory accounting.

But without a focused and effective cost-benefit test, there is nothing to require future rules to be justifiable and cost-effective. And without an effective lookback provision with real requirements, there is nothing to ensure that old rules already on the books will be reformed. Finally, without effective judicial review, we may as well not have a statute at all—we could keep the existing Executive order 12866 that governs regulatory planning and review.

But the whole reason for regulatory reform legislation is that the Executive orders for regulatory review, issued by every President since President Ford, have not been working well enough. There is widespread consensus that the regulatory process is broken and that firm action is needed. There is widespread agreement that many rules have been issued in violation of the requirements of the Executive orders. Many rules could not be justified if scrutinized under a cost-benefit test. Yet, Executive orders since President Ford have required cost-benefit analysis. The current Executive order of President Clinton, No. 12866, similarly requires cost-benefit analysis, but again, there is nothing to ensure that the agencies will comply. There is no effective judicial review in Senator GLENN's substitute to solve this problem.

I also should add that many of the objections that Senator GLENN and others have raised are off the mark or have already been addressed. First, we agree agencies should be required to perform risk assessment and cost-benefit analysis. Second, S. 343 clearly does not override existing statutory criteria. Moreover, S. 343 is not a special interest bill. It does add a petition process to review rules so that the work does get done. I should also note that we did add Senator GLENN's sunshine provision verbatim. Finally, as I have detailed, we agree with Senator GLENN that ''judicial review should be available to ensure that final agency rules are based on adequate analysis.'' The Dole-Johnston compromise meets these principles.

The Dole-Johnston compromise merely directs regulators to issue regulations whose benefits justify their costs. But the bill does not override existing law. This should not be a radical idea in the White House or on Capitol Hill. I do not believe that the American people think it is radical to ask that the benefits of regulations justify their costs.

Similarly, review of existing rules has been required for almost 15 years under Executive order. Yet, there is a lot of evidence that getting agencies to review existing rules is a lot easier said than done. In the first annual report on President Clinton's Executive Order 12866, OIRA Administrator Sally Katzen admitted that bureaucratic incentives make reviewing rules a difficult undertaking. In discussing the ''lookback'' requirement of Executive Order 12866, Administrator Katzen said:

> It had proven more difficult to institute than we had anticipated. . . . [A]gencies are focused on meeting obligations for new rules, often under statutory or court deadlines, at a time when staff and budgets are being reduced; under these circumstances, it is hard to muster resources for the generally thankless task of rethinking and rewriting current regulatory programs.

After extensive review of the regulatory process, Vice President GORE concluded that ''thousands upon thousands of outdated, overlapping regulations remain in place.'' The long but disappointing record of executive branch review efforts necessitates a legislative mandate. But this must be a real mandate, with real requirements. As redrafted, the Glenn substitute does not adequately address this pressing problem. The Dole bill will bring real change.

The Dole compromise reflects many comments and suggestions from numerous Senators of both parties, the Clinton administration, the American Bar Association, and many scholars and legal experts.

In sum, the Dole-Johnston compromise strikes a balance between reform that is strong but workable. I urge my colleagues to set aside partisan politics and support the effort to restore common sense to the regulatory process.

Mr. President, I yield back the floor.

Mr. JOHNSTON. Did the Senator have a question for me?

Mr. ROTH. No.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, getting back to this question of the scope of review under section 706 of the Administrative Procedure Act, which is contained in our bill, there is a subsection (e), about which there has been some comment and argument. Subsection (e) adds new language as follows, that:

> The reviewing court shall . . . hold unlawful and set aside an agency action if it is:
>
> (e) . . . substantial evidence in a case subject to section 556 and 557 . . . and otherwise reviewed on the record.

Excuse me, it is not subsection (e). It is subsection (f). It says it shall hold unlawful an action:

> Without substantial support in the rulemaking file viewed as a whole, for the asserted or necessary factual basis.

This, as I understand it, is a principle of law which is about a century old. And this codifies that view. It was first proposed by Senator BUMPERS, and I hope Senator BUMPERS will come over and defend this provision.

From my own point of view, it adds, really, very little. It has very little to do with risk assessment. It has nothing to do with risk assessment or cost-benefit analysis because that provision does not relate to risk assessment or cost-benefit analysis. That relates to the Administrative Procedure Act appeals, which are outside of cost-benefit analysis or risk assessment.

So it is really, in my view, not a very important issue in this bill. I hope and believe that Senators will be able to get together on that issue.

Mr. President, I believe that we have accommodated virtually every complaint with this bill, save some of those which we have debated. We have not yet satisfied everybody on toxic relief inventory. But I believe that is also in the total scheme of things, not a terribly important provision of this bill.

But we have satisfied the critics of the bill on the question of supermandate. That was always the hot button in this bill. The House bill has a supermandate; that is, under the House bill, you can change existing standards under existing law. Expressly, they override existing law.

Mr. President, we have made it clear—expressly, explicitly clear—that there is no supermandate in this bill. We have straightened out the judicial review provisions, so there is no independent review of the procedures as opposed to the final agency action.

We have passed the threshold of $100 million, the threshold that Senators so insisted upon. It is done. It is in the bill. It is passed.

We have straightened out the petition process so that there is one opportunity to get on the list for review, if you were left off. It is 180 days in length. And, if you miss that 180-day window, then you are foreclosed for a full 5 years.

The appeal from that provision is consolidated. So that the former criticism of the Dole bill, the original Dole bill, which was that there would be this multiplicity of appeals, is simply not here on this bill. There is one consolidated appeal. It will not overload agencies or their legal staffs. There will be simply one appeal and one rulemaking action with respect to the schedule.

We have dealt with the effective date, so that those ongoing rules, which have been in the making for, in some cases, 2 and 3 years, will not be subject to either cost-benefit or to risk assessment. They do not have to do it. They are exempted totally. In fact, all rules are exempted from cost-benefit or

from risk assessment, if the original notice of proposed rulemaking was filed on or before April 1st, 1995. If it was filed after that, they have ample opportunity to do what the law requires.

Mr. President, we won the fight on Superfund. Superfund environmental activities are now out of this bill. And we have passed the Glenn sunshine amendment.

What we have not done is to go along with what the Glenn-Chafee amendment now requires, which is to throw out any requirements and to make this bill completely consensual, because the Glenn-Chafee substitute is sham reform. If you do not want to have cost-benefit analysis, if you do not want to have risk assessment, then vote for the Glenn-Chafee amendment because it is all consensual. If an agency head wants to do it in his or her sole discretion, then vote to put it in their sole discretion. There is no judicial review. There is no requirement. And you can be sure it will not be done.

It will be business as usual if you vote for the Glenn-Chafee amendment. There is no requirement of meeting a test that the benefits justify the cost. Oh, to be sure, you must state whether the benefits justify the costs, but you do not have to meet that test. You just give the information and go merrily on your way and nobody can question you.

Mr. President, the Dole-Johnston amendment is a workable, logical, scientifically sound set of requirements that will put agencies of this Federal Government to a rigorous set of logical steps so that we can avoid what we have under the present law, which is regulations not based on science, not based on real risks, but, as EPA said in 1987 in their own study, that systematically they rate risk according to what the public thinks about those risks as opposed to what the scientists think about those risks. That is a 1987 study by EPA, not some industry group, not some right-wing think tank, but EPA's own study, which said in 1987 in their publication entitled ''Unfinished Business,'' that their estimations of risk were wrong.

In 1990, EPA's own Science Advisory Board made a new study of the old study. They made a new study to determine whether the old study was correct. And they stated that the 1987 study was correct; that is, EPA has not been using science or the proper estimation of risks.

To bring science into the proposition is not to erode health standards. It is not to allow E. coli in meat. It is not to make people less safe. To the contrary, the way we determine whether someone is at risk in the health, safety, or the environment is by a scientific evaluation. You do not decide what to do on a health standard by consulting some soothsayer or some pollster or some political operative. You determine what meets a standard of health by looking at the best science available. That is what we do in this bill. We require the best science available—not the best politics, not the best bureaucrat, not the pressure group with the most members, not the one that can make the most noise, not the one that can meet the most people at a public meeting, but the best science available. And we require them to justify the cost—not to get the cheapest, not to get the least cost, but to get that which satisfies the requirement of health, safety, or the environment, and satisfies the uncertainties of science or data.

Mr. President, the Dole-Johnston bill is a tightly drawn bill which serves the public well. I hope my colleagues will endorse that bill today and vote cloture.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I have listened for some long while to this debate and participated during previous days in this debate on regulatory reform.

I must say that in the early stages of this debate, it was beyond boring. I mean there are boring debates and then there are boring debates that are well beyond the definition of boring. I suppose the reason for that is because the language of this legislation—and also, in some respects, the language of the debate itself—is technical and so arcane and so terribly difficult to understand. I suspect for that reason it has not been very interesting.

Yet the debate itself about regulatory reform, or what kind of regulations we ought to have in this country, is a debate that will affect every single American. It is very important, especially this debate as it relates to the safety of what we eat and drink and breathe. It relates to the controversy that we have had now for a couple of decades over how we do things in this country.

It was not too many years ago that we did not care much about environmentalism or about environmental concerns. The issue was if you are going to produce widgets or you are going to manufacture widgets, you get yourself a manufacturing plant and you start manufacturing widgets, whatever they are, and you can dump the pollution into the airshed; you can drop your raw chemicals into the waters and streams and lakes. It just did not matter because you were providing jobs and producing widgets. And, of course, what you were doing was passing the costs of this manufacturing down the road to someone else who someday would be required to clean up the air and those streams and rivers and lakes.

About 20 or 30 years ago, the people in this country started asking a question: Would it not make more sense for us to stop spoiling this place in which we live by requiring those who produce and those who do certain things to do it without despoiling the air or the water? Would that not make more sense? And, of course, those who were producing, those who wanted to dump chemicals and effluents and pollution into the air, and those who dumped chemicals into the water, did not want to change the way they did business. Frankly, it was costly to change the way they did business.

I have told my colleagues before; I grew up in a town of about 300 to 400 people, which is a small town, in North Dakota. When I was a young boy, my father ran a service station and farm implement dealership, and part of what was done in that service station was people would drive in and we would change the oil in their cars. After we had changed the oil—we would take the nut out of the crankcase and drain their crankcase of the used oil—it would go into a barrel, and when the barrel was full, the barrel was poured into a large tank. And when the tank was full of all of this used oil, we would hook the tank up to a little co-op tractor and drive up and down Main Street of Regent, ND. We had a pipe on the back of that tank with little drip valves on it, and we would drip that used oil all up and down the Main Street of my hometown.

Why did we do that? Because my hometown did not have paved streets, and it was a wonderful thing that the Farmers Union Oil Co. did for Regent. And for that matter, it was a wonderful thing the Regent Garage did for Regent. Every so often, when they had enough used oil in their tank, they hooked it behind the tractor and drove up and down Main Street and dripped that oil on Main Street to keep the dust down.

That was an old-time version of blacktop, I guess, just drip used oil on Main Street to keep the dust down. Of course, if you caught someone today riding a little co-op tractor dripping a barrel of used oil on Main Street of Regent, ND, someone would soon have them on the way to a penitentiary someplace because that is a very serious violation of Federal law and State law. You cannot decide to drop oil on the main street of a town in order to hold the dust down as we did because we understand now, many decades later, we were contaminating and polluting and ruining our water supply. It was not the right thing to do. We did not know it at the time; we thought we were doing a good thing at the time. The people of my hometown thought it was wonderful. But we were polluting the water supply, contaminating groundwater.

So we have rules and regulations that say you cannot do that. If you are going to take used oil out of cars, you are going to have to figure out a way of disposing of that used oil without ruining our water supply—a fairly simple requirement except it costs money. It is a pain for somebody who is changing oil in cars to have to figure out what to do with that used oil. It costs money to

deal with that used oil in the right way.

Well, is it reasonable to require that we not dump that on the streets or dump it in a ditch someplace? Yes, that is reasonable. And it is a cost that then is passed on with the cost of doing business.

In a much larger way, we have had that same debate with respect to air pollution. In the 1970's in North Dakota, there was a decision that we were going to use a lot more lignite coal. We are part of the Fort Union Basin, which has the largest lignite coal deposits in the world. In order to produce electricity to fuel Minneapolis, using lignite coal from North Dakota out there in the prairies, they wanted to build large coal-fired generators to burn that coal and produce electricity. The problem with that was that North Dakota was to host this lignite coal burning. If you are going to burn lignite coal to ship electricity to Minneapolis-St. Paul, for example, so they can have heat in the winter and air conditioning in the summer, do we want air pollution in our airshed in North Dakota as a result of doing that? The answer is no.

So in the 1970's, I and two or three other fellows led at the time a fight in North Dakota to say if you are going to build coal generating plants in North Dakota, you are going to do it right. In other words, you are going to be required to use the latest available technology with respect to your stacks, and the effluence or emissions that come from those coal-fired generating plants have to be reduced by using the latest available technology; in other words, wet scrubbers on those stacks to clean the air. Expensive? You bet. Very expensive. Was it the right thing? Well, 20 years later, I can tell you I am proud of having been involved in that fight and proud of having been in a group that won that fight in North Dakota because, yes, we burn a lot of lignite coal. I am pleased that we do. But it is burned in plants that have wet scrubbers and the latest available technology to prevent the kind of pollution we would have had.

The result is that North Dakota met the clean air standards. We still have a good airshed, largely because we fought the fight and said you are required to do this the right way. That was a regulation, a requirement. Was it a pain for somebody? Was it costly? Yes, it was. But it was the right thing, as well. Had we not done that, we would have produced power and sent it east somewhere and we would have been stuck with dirty air in North Dakota. It is not the right way to do things.

Now, the issue with respect to this matter in this Chamber is an issue, it seems to me, of what is reasonable. Some call this regulatory reform. Others call it regulatory rollback. I happen to believe there are a lot of silly, unnecessary, and unreasonable Federal rules and regulations, and we ought to get rid of them and the people who write them. There is no excuse for that. But we ought to deal with facts, not fiction.

It is interesting, in the book The ''Death of Common Sense,'' among other things, it is said a dentist is now prevented from extracting a tooth, a child's tooth, and giving the tooth to the child. I thought to myself when I read that, what on Earth is happening? Who would write a rule like that? Well, I looked into it. It turns out it is not true—a great story, but it just is not true.

There is a host of those kinds of myths that gain life because someone said it in an anecdote that turns out to be just not true. In fact, there are a dozen or so that have been used in the Chamber, which I am going to come and describe, and most of those dozen are not true either. I will do that in a subsequent presentation. It is one thing if we are dealing with fact. It is another thing if we are not dealing with the truth.

One of the issues that has been raised in the Chamber as silly regulations, we are told, is that a worker cannot wear a beard. In fact, I think it was on Senator HATCH's top 10 list, No. 9. It says forcing a man to choose between his religion and his job because rules do not allow workers to wear a mask over a beard. A stupid rule, Senator HATCH alleged.

Well, I looked into that to try to understand: Is that the case? The Government, at least to the extent that I have been able to find—and maybe someone will correct this—never forces workers to choose between their safety and their religious beliefs about wearing beards.

There are some businesses that do that, that require their male employees to be clean shaven. This actually deals with the question of respirators, which prevent workers from breathing in harmful substances such as asbestos, lead, or toxic chemicals, and apparently about 2.6 million American workers do wear respirators. One kind of respirator does not work if you wear a beard, because you do not get a good seal around your mouth.

But a better respirator can work even if you wear a beard. And if you use environmental engineering controls, to stop workers from breathing in these toxic substances in the first place, you do not need to wear a respirator at all.

So the fact is the Government does not force workers to choose between their safety and their religious beliefs about wearing beards.

Here is another one. An elderly woman cannot plant a rose garden. No. 3 on the top 10 list of silly regulations. We do not have any idea where that comes from. The suggestion, I guess, is that section 404 of the Clean Water Act is preventing someone from gardening as they wished. As we understand it, the story turns out to be almost entirely apocryphal. A number of people have tried to get the facts on this silly regulation, or alleged regulation.

It first appeared in 1991, I understand. It was alleged it happened to a woman in Louisiana. And then when retold, apparently it happened to a woman in South Carolina. And then retold again, it turns out it was probably a woman in Georgia. The Heritage Foundation said that this was a woman in Wyoming. Well, the Army Corps of Engineers has never been able to determine where this story might have come from.

Perhaps if Senator HATCH, or others, might tell us who this happened to and give us some details, we can verify whether this is actually the case. At least those who have tried to verify this say the allegation that an elderly woman was prevented from planting a bed of roses on her own land is simply not the case, simply not true. There are no facts to support it.

There are a whole series of these myths.

No. 4 that was offered in a chart, Senator HATCH's list of top 10 silly regulations, was failing to approve a potentially lifesaving drug, thus forcing a terminal cancer patient to go across the border to Mexico to have it administered.

Now, I want to note that we have provisions of the Federal Food, Drug and Cosmetic Act in this country that do relate to the question of what drugs patients who are terminally ill may use.

First, since 1968, the FDA has had what is called a ''compassionate use policy,'' to permit the use of a drug that is still being tested if there is no other drug available for the condition. Second, the FDA may make promising drugs that are still under investigation available to terminally ill patients before the drugs go on the general market. Third, FDA now has a new fast-track procedure to speed approval of new drugs for serious or life-threatening illnesses.

I understand that there are some concerns about the speed or the pace with which the FDA acts. It seems to me that the Congress and the FDA have tried to address this issue.

You know, the FDA has had an interesting history in this country. They have been careful, it is true. A recent study showed that 56 drugs have been removed from the market in the United States, Great Britain, France, and Germany since 1970. In other words, drugs have been removed from the market 56 times. Of these, only nine removals occurred in the United States. Why? Because the drugs that were removed from British, French and German markets were not approved by the FDA.

Mr. JOHNSTON. I wonder if the Senator will yield.

Mr. DORGAN. I will be happy to yield.

Mr. JOHNSTON. The Senator has been talking about the list of the top 10 worst regulations. Frankly, I have not paid too much attention to those anecdotal sort of things. Is the Senator aware that EPA did a study of its own

regulations in 1987 called ''Unfinished Business: A Comparative Assessment of Environmental Problems,'' and that they concluded that their own estimation of risk did not comport with scientific risk, but rather with the public opinion about those risks? Is the Senator aware that was EPA's own evaluation of its own regulations?

Mr. DORGAN. I am familiar with the study, but I have not had the opportunity to review it in detail.

Mr. JOHNSTON. I have a copy of it here. I wonder if the Senator is aware that in 1990, the Science Advisory Board did a study of that and, in effect, concluded that the first study was correct; that is, that it did not comport with scientific evaluation of those risks, but rather with public perception of those risks. The Senator was not aware of that?

Mr. DORGAN. Again, I have not examined the results of that study in depth.

However, I do not think the Senator would use either study to demonstrate a conclusion that the central thesis of what I am talking about, the Clean Air Act, the Clean Water Act and a whole range of other health, safety and environmental standards, are somehow not grounded in science or not grounded in fact. I think the Senator would not be correct if he says the bulk of what we do to make sure our water is safe, to make sure our air is clean, to make sure drugs are tested and safe, the bulk of what we do is inappropriate. The Senator would not be making that case, would he?

Mr. JOHNSTON. Absolutely not. As a matter of fact, we have specifically stated that all of those laws to which the Senator refers will not be changed in any way, will not be overridden. I thought it was clear in the original Dole-Johnston bill, and we have had a lot of debate here, as the Senator knows, about the question of whether it was clear. We accepted the amendment that made it doubly clear; that is, that each one of those laws will remain in full force and effect, all the standards will be there.

What we are dealing with here is rules. When you take those laws and translate them into rules, what we are saying is that you must look at those laws through the lens of sound science and proper risk assessment, rather than public opinion, politics, emotion, prejudice, superstition—whatever. We are saying translate those good laws, which protect public health and safety, but do it in a rigorously logical and scientifically appropriate way. Would you agree with that?

Mr. DORGAN. Well, as the Senator states that principle, I have no substantial disagreement with him. However, the Senator understands very well what is at work with respect to this body of change and reform. The Senator is perhaps familiar with the stories of the bill that is similar to this one—though not identical—the regulatory reform bill that went through the House of Representatives?

Mr. JOHNSTON. It differs with this bill as night does day.

Mr. DORGAN. Perhaps. My point is with respect to the regulatory reform agenda, I know the Senator has read the accounts and probably verified them in discussing them with our colleagues that the bill in the House of Representatives was actually written by a bunch of lobbyists sitting in a room saying, ''This is what we need to have happen.''

I guarantee you this—I just guarantee because I have been in these fights in North Dakota for a long time, with respect to air pollution and other matters. The corporate system is interested in profit, and they should be because they are responsible to their stockholders. When they sit around and propose regulatory reform legislation, they are designing to find ways to weaken the Clear Air Act, the Clean Water Act and a whole series of regulatory standards. That is simply the way it works. I think that is unfortunate, but they have every right to try to do that. I want to make sure we get rid of the silly and the outrageous regulations—and there are some—but I want to keep the foundation of what we have done.

Is the Senator aware of this: I wonder if the Senator is aware—likely, because I think he is one of the best in the Senate on the issue of energy and related issues—that in the last 20 years, we have nearly doubled the amount of energy we use, and yet the airshed in America is cleaner than it was 20 years ago?

Mr. JOHNSTON. Absolutely.

Mr. DORGAN. If the Senator is aware of that, the Senator, I think, would agree with me that is not because the captains of American industry said, ''We ought to invest our money to clean the air.'' It is because Congress decided to do something. We decided to say to people, ''When you produce, part of the cost of the production is the requirement not to pollute America's air.''

Mr. JOHNSTON. And that is why we have every single provision of that Clean Air Act unchanged, not overridden, and the full force and effect if this bill passes.

Did the Senator know the original risk assessment was proposed by a Democrat, namely me, and passed overwhelmingly here?

Mr. DORGAN. In the last session of Congress, absolutely.

Mr. JOHNSTON. I do not know what happened in the House, whether or not lobbyists were involved in it. That is irrelevant to this bill. We took the original Dole bill which came out of committee, which, in turn, differed from the House bill, and made over 100 changes, including all of those I talked about. So I do not know how it started or how it changed or how the House did it or what the Louisiana Legislature did. I am telling you what is before the Senate now, which is the relevant thing, and what is before the Senate now is a tough bill which incorporates all of those good provisions for clean air and water that the Senator speaks about.

Mr. DORGAN. I appreciate the Senator's participation. I have great respect for Senator JOHNSTON.

Let me finish what I was trying to say.

Mr. LEVIN. While the Senator is yielding, if the Senator will yield for an additional question.

Mr. DORGAN. Yes, I yield.

Mr. LEVIN. The Senator from Louisiana asked if the Senator was familiar with a number of documents, and there is a third document I would like to refer to, which is the March 1995 report, later than the two documents to which the Senator from Louisiana referred.

In the 1994 report of the National Academy of Sciences—that report entitled ''Science and Judgment in Risk Assessment''—they made a number of specific recommendations to the EPA where they might improve policies, practices, and methods of risk assessment, but also concluded the following:

> EPA's approach to assessing risks is fundamentally sound, despite often-heard criticisms.

I ask this question of my friend—as to when the Senator was reviewing the two earlier documents of the Senator from Louisiana—whether he might also add to that reading list the 1994 report of the National Academy of Sciences?

Mr. DORGAN. I would be happy to add that report to the list of reports I should review. I have heard the Senator from Louisiana refer to his two in previous debate. I doubt whether the conclusion one can reach from them is that you have a bunch of folks proposing regulations on unscientific basis. Let us think about the facts here.

The fact is we use twice as much energy now and have cleaner air. Why is that? Because we have clean air regulations that do not work? Of course not. They have succeeded. One of the things we at least ought to take credit for is having marched in the right direction. I think the Senator from Louisiana would not contest that. He is making the case, yes, that is probably true, but we are not interfering with that.

So let us understand that what has been done in the name of regulation, in many instances, has been awfully good for this country. We now have started to clean up America's airshed. I think a lot of the kids and families would say thanks for that. That is the right thing. We want to live in a healthier place. My sense is that if you ask folks out there: Do you think that the food safety standards in this country make sense? Would you sooner go into a restaurant and order a side of beef—not that the Senator from Louisiana would eat a whole side of beef at one sitting—but would you like to see on that side of beef one of those big stamps that says ''USDA inspected,'' or would you

like to see that it has a little stamp that says, ''This side of beef was inspected by Sid and Arnie's Meatpackers Co.''?

Well, look, I think what we have done for food safety has made a lot of sense in this country. I will not tell the stories about bread and rat poison and meat going down the same holes in the 1900's before we decided to have meat safety standards.

Mr. JOHNSTON. The answer is, of course, I want that ''USDA inspected'' label on there, and I want scientists to make that inspection based on scientific standards and not on some public opinion poll or some prejudice or some superstition. Put good science in the picture. That is all we are saying. I want the inspections to continue, but with good science. That is what we are about. You know, it is the scientists who discovered E. coli, not some pollster out there reading the results of the last election.

Mr. DORGAN. The Senator knows what has happened with E. coli in the last couple of days. He has read the reports about outbreaks in three or five States in recent days. We are now going to be talking, one of these days—I hope seriously—about inspection of fish and seafood. That is now voluntary in this country, and it ought not be. When we get to that point, I wonder whether we will be as aggressive and interested in making sure that that inspection is the equivalent of other flesh food and that we will have the same kind of assurance for the American consumer that they are buying fish and seafood that is healthy and wholesome.

I happen to think that in some areas regulations make sense. I do not think the Senator from Louisiana disagrees with that. But we have been in this circle here where if somebody holds up a silly regulation, I guarantee you—and I know we are not debating the House bill—that that bill was written by the people who want to get out from under the cost of regulations. People used silly examples then to demonstrate the rule. Well, even if the exception is true, it does not demonstrate the rule.

We are always debating things the Government is spending. Somebody might say, gee, ''Did you know somebody in a research is studying the sex life of a screw worm?'' Yes, they study that with public dollars. Why? They did that to save the beef industry in this country. And they did. I cannot even describe to you the cost-benefit ratio of that work. But someone can make fun of that, I suppose, or the fact that somebody was sitting in a laboratory with dark glasses studying molds and discovered penicillin. You can go on forever.

With respect to regulations, we go through the same kind of situation. Someone holds up a silly one—and there are some—and says, ''This demonstrates the rule.''

I am going to support the Glenn-Chafee regulatory reform substitute because I think it moves in the right direction. It is substantial reform. It requires agencies to show that benefits justify the costs, but it does not allow the cost estimates to control, just singularly——

Mr. JOHNSTON. If the Senator will yield, I submit to the Senator the Glenn-Chafee bill does not make such a requirement. It makes a requirement of stating whether the benefits justify the cost. But it is no longer a decisional criterion. You state it, but you do not have to comply with it. That is the point.

Mr. DORGAN. I will yield soon, but I say that my understanding of the Glenn-Chafee substitute is that it requires that the agency use a cost-effectiveness standard, and the cost effectiveness standard, in looking at which regulatory scheme or approach to use, is substantially different than what I believe your proposal would require, which is the least-cost standard. You might find a standard that is the least cost but is less appropriate than the most cost-effective standard. That is how I view the differences in these proposals.

I yield to the Senator from Michigan.

Mr. LEVIN. The Senator has pointed exactly to one of the major differences in the two bills, which is the requirement in the Johnston bill that you go with least cost, unless there is a certain nonquantifiable benefit. But if the benefits are quantifiable—which they are in many instances—you are forced to go with the least cost, even though a slightly larger cost would produce a major additional benefit.

So the Senator is exactly right on that. On the question of whether or not cost-benefit analyses were required in the Glenn-Chafee substitute, it is required. It is right here on page 29, line 14. I am going to read the language because it is required, but if it cannot be given, then the agency must say why, in fact, the certification that the benefits justify the cost cannot be made, because there are instances where an agency cannot make that certification. This is the language:

> The agency must certify that the rule will produce benefits that will justify the cost to the Government and to the public of implementation of and compliance with the rule, or an explanation of why such certification cannot be made.

And in addition to requiring that that certification be given, the Glenn-Chafee approach is that Congress is then put in the position where, if such a certification is not or cannot be made, then it will or can veto such a regulation. We are put in the position, because of the expedited process here, for Congress to review regulations, and where the benefits do not justify the costs or any other regulation, we are accountable.

Finally, there is some accountability in the elected officials of this land for the regulations which people might think are burdensome. We are not going to be able to hide behind the regulators under Glenn-Chafee. We have here legislative veto.

So in the event an agency cannot certify that the benefits justify the cost, someone can come to us—a constituent can come to us and say, hey, look at this cost-benefit analysis. They are producing here something which costs $1 billion and only produced one-half billion dollars in benefits. We want you to veto that because it does not make sense. We are not going to have any excuses—no more excuses, no more hiding behind regulatory agencies. So there are significant differences between the two bills, but they are not both regulatory reform, and cost-benefit is required in both bills. The difference is what happens when an agency cannot certify, or should certify, that the benefits justify the cost under Glenn-Chafee. We then take the position as to what should happen.

Mr. DORGAN. Mr. President, I know that others want to speak. Let me make two final points on this subject. I appreciate the comments of the Senator from Michigan.

It is very hard, it seems to me, for anyone to talk much about success. Failure is what sells. Scandal sells. Success is largely boring.

You know, Gregg Easterbrook has recently published a book about the circumstances we face in this country with our air and our water. He points out something most Americans probably do not know, that our air is cleaner now than 20 years ago. Is it perfect? No. Are we moving in the right direction? Yes. Our water is cleaner now than it was 20 years ago. Our lakes, rivers, and streams are cleaner than 20, 25 years ago.

Think back 20 or 25 years ago. Most people foresaw an era ahead of gloom and doom. That seemed to be where we were headed—more pollution, more use of energy, and more pollution of our air, of our water. And they figured that we were consigned to do that. It was inevitable, they thought, because we could not control it.

Congress decided we wanted to do something about it, and we passed legislation and said we have to change the way we do business. Yes, it is costly. Yes, it is probably a pain to do that. But we insist it is a cost of doing business, to keep America's airshed clean, to clean up our rivers and streams.

Mr. President, 20 years later we can stand on the floor of the Senate and debate regulations and talk about the fact that we changed the direction this country was headed in. How? By regulations, by laws that say we demand this country change the way it is moving.

Now, I happen to think that is wonderful. We should claim a little success in areas where we have made progress.

Those who are elected to Congress under a regime of reform or change, who come here thinking they ought to change what is successful, in my judgment, jumped on the wrong wagon on the way to town.

We ought not be reforming something that is working and moving us in

the right direction. If anyone believes that the direction of the regulatory reform bills in the House and some that have been proposed here would weaken the fundamental structure of our attempt to clean our air and clean our water and keep our food safe, it seems to me the choice is pretty clear. The choice is to support the Glenn-Chafee bill, which does reform our scheme of regulations in a sound and a practical way but does not jeopardize what we have accomplished in this country.

When I began this presentation, to those who took umbrage when I said this debate is beyond boring, and for those who have participated in it, I do not mean this personally. I say it is beyond boring because most of it is so fundamentally arcane and technical and hard to understand, but it will affect the life of every American citizen. It might be boring, but it is critically important.

If we strip the peeling off, we are talking at the roots, yes, about E. coli; yes, about mammograms. We are talking about health, safety, clean air, clean water, and that affects every single American. That is why this debate is important. It is why it is important we get it right.

Finally, it is why it is important we not decide to be champions of change in areas where we are successful. That makes no sense.

That is why I come here supporting the Glenn-Chafee bill, the substitute, and hope that we will not invoke cloture late today, and instead decide to embrace the Glenn-Chafee regulatory reform substitute. I yield the floor.

Mr. BOND. Mr. President, I thank the Chair. I rise to support S. 343, the Comprehensive Regulatory Reform Act of 1995, and in strong opposition to the amendment offered by our friends, the Senators from Ohio and Rhode Island.

Let Members know at the outset that the Dole-Johnston substitute is not a regulatory repeal act. It is not a regulatory prohibition act. It is, in fact, a strong, regulatory reform act.

It reforms the way Government regulations are issued, with three goals in mind: First, to bring accountability to the bureaucrats writing the regulation and, just as importantly, to those in Congress, who, after all, write the laws that generate those regulations; second, it attempts to bring a little common sense to the regulations that are issued; third, it brings a little more honesty to the way we talk about what we are regulating and why some truth in regulating is necessary.

I am afraid that the Glenn-Chafee amendment comes up short when measured by these criteria. This is an effort to go back to the status quo. It will ensure we stay where we are. It would fail to ensure that Government agencies obey the law and follow common sense like the rest of Americans have to do.

If the Glenn-Chafee amendment were to be adopted, we might as well do nothing—for that is, in fact, what will happen. There will be no change. Same old 6's and 7's, the same old way we have been doing things.

It is my contention that we simply cannot afford to do nothing. We cannot accept the status quo. Regulations are like water: Too little and you cannot live; too much and you drown. In our crowded society, there is no question that regulations are needed to help make our communities a better place.

As has been pointed out at length in the recent discussions on this floor, over the last 25 years, environmental regulations have helped ensure that the air we breathe is cleaner, the water we drink is safer, and the rivers we fish and play in are increasingly less polluted.

Workplace regulations have made our jobs safer. One would think from listening to the recent debate that we were going to change all that. That is not the point.

Those who argue for 25 years are not being contested. But the argument is about here, today, and where we go from here. That is the point that has been missed in some of the discussions we have just heard.

In recent years, the fact is that government regulation has risen to the level where it is choking off the growth of jobs, the growth of economic opportunity and the betterment of the way of life of everyone.

Just like the waters of the Missouri River that recently rose to flood part of my home State of Missouri, we are suffering a flood tide of regulation. The Comprehensive Regulatory Reform Act of 1995 will go a long way to stop the rising tide of overregulation. When the President signs this legislation, as I believe he eventually will, because he must, we are going to reduce the burden of government regulations below the flood stage so that regulations continue to enhance the quality of life, not interfere.

Now, opponents of this legislation have taken the approach that there is no problem with overregulation; regulation is only good. We have heard stated how many good things regulation has done. They say, Do not worry, be happy; regulatory burdens are all in your imagination. To that I say, respectfully, Bunk. Get outside the beltway, ask the people who live and work in the rest of America what they think. Ask the people who have to comply with the regulations. Ask small businesses.

I have had the opportunity as chairman of the Small Business Committee and as cochair of the Regulatory Relief Task Force to hear plenty from people in small business. Last week, I spoke on this floor about a series of field hearings the Small Business Committee has held around the country. I can say that the Senators who attended those hearings had our eyes open to what is going on with small business and the cumulative burden of regulations.

As the Chair well knows, we heard in Memphis from people from all different areas of small business how the burdens of government regulation were making it impossible for them to continue to bring the jobs, to provide the products that were essential, not only to the economy, but to the well-being of the people in that area.

Just last month, I heard the same message from delegates to the White House Conference on Small Business. They made it very clear to anyone who was willing to listen that excessive overreaching regulations and outrageous enforcement zeal are a top priority for the Nation's small entrepreneurs who create large numbers of new jobs.

These delegates came to Washington, took time away from their business, spent their money, and devoted resources and effort of extraordinary magnitude to speak on behalf of small business.

They voted on the biggest concerns to small business from a list of several hundred proposals, from judicial review of the Regulatory Flexibility Act to cost-benefit analysis, to protection for self-audits, to sunsetting old regulations, to reform of OSHA—the delegates sent a clear message to us and to the President. Maybe some people stuck inside the beltway do not know that regulations are a big problem. But small business knows that it is drowning in a floodtide of regulations.

Mr. President, I ask unanimous consent to have printed at the end of my remarks the list of the top 30 concerns as voted on by the delegates to the White House Conference on Small Business, so everyone can see how important this legislation is to small business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. BOND. I do not believe the delegates to the White House conference would want to see this bill weakened by the Glenn-Chafee amendment.

Let us look at environmental regulations as an example of the rising cost of regulation. In the past, environmental regulations were based on common sense and they have been responsible for giving us a much improved quality of life. But increasingly they are now choking off American entrepreneurship and producing fewer and fewer benefits.

I think I understand why this is happening. Because, to me, solving our environmental problems is a little like harvesting a Missouri soybean field. You can get most of the soybeans quickly and efficiently with a modern combine. It is an expensive machine but it is worth the cost because it is fast, efficient, gets the soybeans that provides a vital food source supply, and it does so in an economical way. We could build a superefficient combine, designed to harvest almost every single soybean, leaving almost none behind, but it would sure be a lot slower and it would undoubtedly be far more expensive. And very few farmers in Audrain

County, MO, where I am from, could afford it because it would only get a few more soybeans. You could even take that one step farther. You could get every last bean, perhaps, if you hired an army of people to crawl through the fields on their hands and knees, looking for any single bean the machine has missed.

The point of all this is, simply, there is a diminishing return on investment at some point. Sooner or later, you have to say enough is enough and move on to another field. When is it that you say enough is enough? You say enough is enough when science says that it is enough. If there is something truly dangerous, if the gathering of that last soybean out of the field has to be done for critically important human health, welfare and environmental needs, then yes, let us talk about getting that last bean. But when there is no real danger to the environment, or to human health, what good is there to pursue perfection?

Environmental regulations work just like that. Initially, our regulations were based on common sense and well worth the money we spent to reduce pollution. Nobody wants to go back—and nobody is talking about going back—to the days of dirty water, dirty air, dirty food. We have made great gains in environmental quality and significantly reduced pollution at moderate costs.

But in the last few years, I will tell you, something has gotten out of whack. In many areas of environmental protection we have found the costs to get those last few molecules of pollution skyrocketed. Achieving additional gains is exorbitantly expensive, with more and more money being spent on fewer and fewer results. In these areas we have reached the point of dramatically diminishing returns.

If we cannot achieve zero risk—and most scientists I talk to tell me that nature and this world is not a zero risk environment—does this mean we should stop writing regulations to protect our health and environment? No. Not at all. It simply means we cannot afford to regulate unwisely, as if we were going to achieve a zero risk, absolute perfection ideal, without regard to costs.

The current effort before us today in this body is to pass regulatory reform. Foremost, it is to ensure that regulation is done wisely. Those of us who are pushing for reform believe that knowledge, scientific knowledge and common sense, are important parts of wisdom. If we are going to spend $160 billion on the environment, we think everyone should get a better understanding of what kinds of risks we are protecting against, the benefits of specific regulations and the cost of those regulations.

The real tragedy of this is that our desire for perfection will bankrupt us and divert our efforts away from more significant risks. Every day of every year, real people die because we have misallocated our resources. One study conducted at the Harvard Center for Risk Analysis has shown that if EPA did a better job of prioritizing the resources consumed by a sample of 90 average regulations, 1,200 needless deaths would be avoided. That is just 90 rules at just 1 agency.

Across the Government, this same study showed that by using common sense and getting the most bang for the buck, we could save tens of thousands of additional people every year without imposing any additional cost on our cities or businesses. These are the real victims of the status quo. The complaints of how this bill might lead to someone being exposed to some increased theoretical risk pale in comparison to the deaths that occur every day because we have spent our resources responding to the latest media scare instead of basing our decisions on sound science and cost-benefit analysis.

Those on the other side who are exposed to regulatory reform—there are some who are opposed to any kind of regulatory reform, they like it just the way it is—like to trout out the phoney scare stories of the victims of E. coli food poisoning. They know that this bill contains clear safeguards for regulations that protect us from food poisoning. But the other side does not say much about those who are inquired or killed every year because we waste resources on trival risks, instead of focusing on the real health and safety risks. These are the victims who are left with no hope if the Glenn-Chafee amendment passes.

The Dole-Johnston substitute has three simple goals: we want Government regulators and the Congress to be more accountable for their actions. We want Government regulators to be honest. And we want them to use a little common sense.

Central to increased accountability are the congressional review and tailored judicial review provisions of this bill.

Judicial review of the Regulatory Flexibility Act was the third highest vote-getter at a recent White House conference. Let me take just a moment to explain why this is important.

The Regulatory Flexibility Act, for those who are not familiar with the terminology, refers to a measure passed in 1980 by Congress. It was supposed to give a break to small business by telling agencies that they had to be flexible in passing regulations that deal with small business. They were supposed to conduct a regulatory flexibility analysis to see if there are other ways of getting the same job done if it affected small business.

Unfortunately, the problem was that Congress in its wisdom—and I apologize for the oxymoron—struck any kind of judicial enforcement out of the Regulatory Flexibility Act. So what happened? Every time the Advocacy Council and the SBA went to another agency and said, ''You did not comply with the Reg Flex Act,'' or a small business went in and said ''You did not comply with the Reg Flex Act,'' the answer in too many cases was, ''Tough. There is nothing you can do about it.''

There we see the provisions of the Glenn-Chafee amendment making judicial review almost ineffective, totally ineffective in many instances, if there is only a show of cost-benefit analysis. We do not want to make that same mistake again. We put in an appropriate judicial review for reg flex, and on decisions such as cost-benefit analysis.

The judicial review provisions of S. 343 will provide a much-needed check on the actions of agencies, without subjecting rules to judicial scrutiny of minute procedural steps. This provision strikes the right balance between accountability and a desire not to clog up Federal courts.

The bill provides for greater congressional accountability by including the provisions of the Nickles-Reid Congressional Review Act passed by the Senate 100 to 0. There are two important changes. First, the period for congressional review is extended from 45 to 60 days. Second, the threshold for rules whose effectiveness is delayed during the congressional review period is tied to the overall definition of a major rule.

The second goal of the bill is more honesty in the pronouncements of the Federal Government. S. 343 would for the first time require Federal agencies, not only to tell us what they know, but also to tell us what they do not know, when it comes to assessing risks. EPA would no longer be able to hide the ball from the public in their analysis of regulations. From now on, Federal agencies will have to come clean on the assumptions they make and the quality of the science they use in making regulatory decisions. This is a provision that ought to be called truth in regulating legislation. I expect and hope that as a result of this legislation, many so-called risks that EPA tries to regulate will turn out—like the alar scare—to be based more on fear than fact. After passage of this legislation, if sound science indicates that a significant risk needs to be addressed, then, of course, we must support sensible and cost-effective regulations. That is what this is all about, making sure that we get regulations focused on the design to get rid of those risks.

This bill is also about a return to common sense in regulating. Federal agencies spend too much time focusing on the small risks and not enough time on the big risks. This legislation would go a long way toward fixing that. This bill directs agencies to set priorities with the goal of achieving the greatest net reduction in risk with the public and private sector resource expended, and to incorporate those priorities in the agency budget, regulatory agenda, and enforcement and research activities. As I mentioned last week, over the last several years in the Appropriations Committee, the ranking member

on the HUD–VA Subcommittee, Senator MIKULSKI, and I, have been pushing agencies to use comparative risk assessments to prioritize their budgets to focus on the biggest risks. The National Academy of Public Administration recently released a report to the Committee on the EPA entitled ''Setting Priorities and Getting Results.'' One of its top recommendations was to ''Use comparative risk analysis to inform the selection of priorities and the development of specific program strategies.'' It only makes sense that agencies use their resources to tackle the worst problems facing the country. Sound like common sense, but the sad fact is that is not what's happening today.

The bill includes an additional way to bring some common sense to regulatory decisions—cost-benefit analysis. The basic idea is a simple one. We should spend more resources and effort on big problems and less on small problems—that is cost-benefit analysis, that is what is so scary to the opponents of this bill. We say that in meeting the requirements of existing laws, Government agencies should pick a regulatory solution with costs that are justified by the benefits. It seems astounding to me—and I think it would to most people in America—that today Government regulators write rules for the rest of us without an established procedure to evaluate costs and benefits, but frankly that is what is happening. And it is even more astounding that some people have been using emotional appeals to generate irrational fears of this commonsense approach that all of us use in our everyday lives.

Finally, the bill repeals the Delaney clause, one of the worst examples of regulation with no basis in sound sciences. Public health protections are maintained with a replacement provision that allows regulation unless there is only a negligible or insignificant foreseeable risk to human health. American farmers will no longer be hamstrung from using safe and effective crop protection products simply because our technology lets us measure parts per trillion or parts per quadrillion.

We have had testimony before our committee from scientists, including the President's own Science Advisory Board, saying the Delaney amendment is no longer good science. The Delaney amendment cannot be justified in a time and day when we are able to measure the most minute parts, parts per trillion or even quadrillion. This is not sound science they have told us. It is time to get the Delaney amendment off the books.

Mr. President, the Dole/Johnston substitute will help small business that are hamstrung by Government redtape. That is why it has the overwhelming support of the small business community, including the National Federation of Independent Business, the Small Business Legislative Council, National Small Business United, and other small business groups.

I would ask unanimous consent to have printed in the RECORD at the end of my remarks, several letters of support for the bill from these small businesses.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BOND. Mr. President, small business is not alone in its support of this bill. The Dole/Johnston substitute will also help the farmer who cannot use products that good science shows have no risk to health. Small towns will have less to fear from arbitrary pronouncements from Washington. I have a letter from the National Association of Towns and Townships that has written me in particular support of the language in the bill pertaining to the judicial review of the Regulatory Flexibility Act. You see, these towns know that for too long, Government agencies have ignored the impact of regulations on small and rural communities. They are counting on this legislation to force Government agencies to obey the law and minimize the impact of regulations on small communities.

The Dole/Johnston substitute will bring some much needed accountability to the faceless regulators sitting in their Washington office buildings cranking out the stream of new rules. It will also bring accountability to Congress, where some of the blame lies for those regulations. It brings sunshine and openness to the way the Government analyzes and talks about health risk, to give us a more honest discussion of the problems facing us.

Finally, it brings some common sense to the decisions that the bureaucrats make. Just like every family in America who looks at the costs and benefits of going on vacation or buying a smoke detector, Government regulators are going to have to take a hard look at the cost and benefits of their actions.

The claims made by some of the extremist pressure groups that this legislation will harm the environment are simply false. By grounding our health and safety rules on sound science we can avoid wasting our money on phantom risks. By dealing with the worst problems first, and spending our resources wisely, this bill will help afford a safer and cleaner environment for us and our children.

In contrast, the Glenn/Chafee amendment ensures that we will continue on our present course, the flood waters of regulations will rise ever higher and more and more small and large businesses will drown in the flood. Make no mistake, a vote for this amendment is a vote against small business, a vote against common sense, and ultimately a vote against the environment—because unless we reform the way we do business we will continue to waste our resources on trivial risks, and have nothing left over for the very real health, safety, and environmental problems that call for commonsense solutions.

Mr. President, I yield the floor.

EXHIBIT 1

FINAL RECOMMENDATIONS—1995 WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Rank	No./Issue	Votes
1	224 Independent Contractors	1471
2	214 Meals & Entertainment Expense	1444
3	183 Regulatory Flexibility Act	1398
4	218 Estate Tax Repeal	1385
5	87 Health Care Reform	1371
	*63 Superfund Reform	1371*
7	91 Pension Reform	1369
8	265 NII/Intellectual Property/SIC Code	1358
9	51 Environmental Enforcement	1342
10	200 Tort Reform	1332
11	121 Association Export Programs	1329
12	194 Agency Enforcement Reform	1328
13	406 SBIR/Patient Capital	1292
14	144 Unfair Competition	1285
15	78 100% Health Care Deduction	1283
16	5 Pension Investments	1279
17	9 Bank Lending Incentives	1275
18	385 Tax Equity	1258
19	286 SBA Survival	1249
20	34 Home Office Deduction	1239
21	129 Export/Import Bank Financing	1181
22	57 Regulatory Takings/Brown Fields	1118
23	115 Intellectual Property Protection	1080
24	242 Capital Gains	1054
25	164 Davis-Bacon/Service Contract Act	1046
	188 Paperwork & Regulatory Reform	1046
27	41 Entrepreneurial Education	1035
28	369 OSHA Reform	1030
29	24 SCOR	1027
30	14 Secondary Market for S.B. Investments	1009

EXHIBIT 2

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, June 28, 1995.

Hon. CHRISTOPHER BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: I am writing to support your efforts to insure that the strongest possible judicial review language is included in the Comprehensive Regulatory Reform bill. The promise of regulatory reform will not be fulfilled if the council of the self appointed guardians of bureaucratic baloney is followed regarding amendments to ''reg flex''. Many of those who have criticized the direction you are headed with the Regulatory Flexibility Act and with your reading of how it interacts with the Administrative Procedures Act are only vaguely aware of the purposes or processes of either law. I urge you to hold fast to the course you have set—a course laid out in clear language by the Regulatory Flexibility Act to fit regulations to the ability of small entities to comply with them.

Sincerely,

MICHAEL O. ROUSH,
Director of Federal Governmental Relations—Senate.

SMALL BUSINESS LEGISLATIVE COUNCIL,
Washington, DC, June 26, 1995.

Hon. CHRISTOPHER BOND,
Chairman, Committee on Small Business, Russell Senate Office Building, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Small Business Legislative Council (SBLC), I wish to express our strong support for the ''compromise version'' of regulatory relief legislation. We believe it is an important step forward on behalf of the small business community.

At the recent White House Conference for Small Business, several of the top 10 recommendations included suggestions to improve the regulatory process. We note that several of those recommendations are addressed within the compromise version of the regulatory relief legislation.

While the delegates to the conference did not rank the proposals, the number three

vote-getter at the conference was a call to amend the Regulatory Flexibility Act to add judicial review. We note that the compromise version of the regulatory relief legislation includes strong language to provide the judicial review necessary to ensure that agencies comply fully with the Regulatory Flexibility Act.

The Small Business Legislative Council (SBLC) is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, tourism, and agriculture. For your information, a list of our members is enclosed.

We at the Small Business Legislative Council look forward to working with you to see this legislation passed and ultimately enacted into law.

Sincerely,

JOHN S. SATAGAJ,
President.

Enclosure.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Equine Practitioners.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Gear Manufacturers Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Interior Designers.
American Society of Travel Agents, Inc.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
AMT—The Association for Manufacturing Technology.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Automotive Warehouse Distributors Association.
Bowling Proprietors Association of America.
Building Service Contractors Association International.
Christian Booksellers Association.
Cincinnati Sigh Supplies/Lamb and Co.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Television Association.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Chimney Sweep Guild.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Food Brokers Association.
National Independent Flag Dealers Association.
National Knitwear & Sportswear Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Wood Flooring Association.
NATSO, Inc.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Professional Lawn Care Association of America.
Promotional Products Association International.
Retail Bakers of America.
Small Business Council of America, Inc.
Small Business Exporters Association.
SMC/Pennsylvania Small Business.
Society of American Florists.
Turfgrass Producers International.

NATIONAL SMALL BUSINESS UNITED
Washington, DC., June 28, 1995.

Senator CHRISTOPHER BOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BOND: National Small Business United is extremely pleased with your efforts to pass into law S.B. 343. Ever since the original passage of the Regulatory Flexibility Act, small businesses have expected the federal government to offer more flexibility when imposing federal regulations on small businesses. Unfortunately, agencies have not been held accountable to this act. It did not provide for judicial review which is so essential to its implementation.

The language which you have submitted to this bill will be most beneficial to small businesses across the United States. It is high time that Congress and the President act to provide small businesses with the opportunity to hold our federal government accountable for the regulations they impose on small business. Your leadership on this issue is most helpful and NSBU is grateful for your efforts.

Having just participated in the 1995 White House Conference on Small Business, I am aware that this issue was number three (3) on the final list of recommendations to the President and to Congress. Small business owners who were delegates to that conference want real reform. Your language will deliver a pragmatic response to their recommendation.

Now is not a time to compromise on this issue. It is too important to job creation and the growth of the small business community.

Thank you for your leadership. NSBU will do all it can to support your efforts.

Sincerely,

JOHN PAUL GALLES,
President.

NATIONAL ROOFING CONTRACTORS ASSOCIATION,
Washington, DC, July 5, 1995.

Hon. CHRISTOPHER S. BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BOND: The National Roofing Contractors Association (NRCA) applauds your excellent language providing judicial review for the Regulatory Flexibility Act of 1980 (Reg Flex) in the Comprehensive Regulatory Reform Act of 1995, S. 343.

NRCA is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry and has over 3,500 members represented in all 50 states. NRCA contractors are small, privately held companies, and our average member employs 35 people with annual sales of $3 million.

Reg Flex requires that federal agencies analyze the impact their regulations would have on small business before they go into effect and minimize that impact. But with no judicial review, agencies disregard it. If an agency head certifies that a regulation will have no significant economic impact on small business, the agency can ignore Reg Flex.

For example, OSHA's new Fall Protection Standard, Subpart M, requires all persons working above six feet to have either a safety harness on, safety nets, or scaffolding with a walkway and a guardrail. We estimate its impact to be at least $250 million annually; OSHA's estimate is $40 million annually, and the agency goes on to state that the standard will not have a significant impact upon a substantial number of small entities.

Your judicial review language for Reg Flex would put a stop to this kind of agency noncompliance, and NRCA would oppose any effort to weaken it.

Sincerely,

CRAIG S. BRIGHTUP,
Director of Government Relations.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from California.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I have not had an opportunity yet to speak on the bills before us, most specifically S. 343. For many days now I have listened as the Senate has been debating what are two

major regulatory reform bills. They are complex and detailed and some have said boring. But one way or another they will touch the life of virtually every American citizen.

The fact is that regulations serve an important purpose in our society. But as with all laws, they have to be balanced against other competing needs, and reexamined from time to time in order to remain effective.

I happen to be a great fan of the Senator from Louisiana. I believe he is a sound thinker. He is an effective leader, and he has played a major role in the debate on these issues. I respect him. I also respect the majority leader, whose bill this is, as a seasoned, experienced Senator who understands the impact of regulations upon the community regulated.

As we address the issue of regulatory reform, I think certain considerations should guide us in the process.

First and foremost, public health and safety must be the paramount concern. And we have heard that concern voiced over and over in the debate over breast cancer, over E. coli, and over a myriad of other regulatory programs.

Second, Government regulations should not strangle business and commerce but should seek to encourage economic growth as much as possible. That is often easier said than done, particularly in the largest State in the Union where problems are severe and often businesses will seek to choose an easier way and leave the State.

But the bottom line is: regulations have to make sense. Finding the right balance will be the determining factor as to whether we are successful in this effort.

California has a huge stake in this bill both from a public safety perspective and an economic perspective.

We have the biggest air pollution problem in the Nation. Children today, born in the Los Angeles basin, suffer from a 10 to 15 percent decrease in lung function compared with children in other areas as a result of air quality.

California has 96 Superfund sites, the second largest number in the country—that is almost two major toxic waste dumps for every county in our State. In 1990, I had occasion to visit one of them. It is a place called Iron Mountain mine, near Redding, that had been owned by a chemical company and had been mined for various minerals. There were holes in this mountain, some the size of 30-story office buildings. When it rained, water interspersed with the chemicals producing sulfuric acid which then drained out onto the banks of the Trinity River actually metallizing some of the banks. This Superfund site is now in the process of being cleaned up. So I am very pleased that the portion of the legislation impacting Superfund sites has been removed from the bill.

Santa Monica Bay, one of the most beautiful areas in the country and a premier tourist attraction in my State, has been contaminated with heavy metals and DDT to such an extent that the public is often warned not to eat fish caught there. I remember when I first went to live in Los Angeles, I went into a restaurant and ordered sand dabs and the waiter said, ''Don't order sand dabs; they are bottom-feeding fish and they are caught in the Santa Monica Bay, and the bay is polluted.''

Economically, California's unemployment rate, though beginning to improve, is still two percentage points above the national average. We are still struggling to climb out of the recession and cope with continued defense downsizing.

So the last thing California businesses need is unnecessary or cumbersome regulations that drive up costs and drive out jobs.

So I have listened with great care to this debate, and I have had the privilege of discussing certain of my concerns with the Senator from Louisiana. But the bottom line and the one that I have reached is that the Glenn-Chafee bill contains the best and most balanced approach to regulatory reform.

I would like to address what I believe are the primary weaknesses in the Dole-Johnston legislation.

In the area of cost-benefit, I believe the Dole-Johnston legislation, in a sense, throws the baby out with the bathwater. Cost-benefit analyses are supposed to weigh cost and benefit and then allow for the best alternative to be chosen.

The Dole-Johnston bill does not do that—it simply requires choosing the least-cost alternative. That does not always make sense, and it could have unfortunate results.

Let me give you some examples.

Seatbelts in the front seat. If the standards in the Dole-Johnston bill were applied to seatbelts, I am told by the National Highway Traffic Safety Administration that they would probably not be able to require both lap and shoulder belts in cars.

That is because, even though having both lap and shoulder belts save lives, the lap belt alone is the least-cost alternative.

Mr. JOHNSTON. Will the Senator yield at that point?

Mrs. FEINSTEIN. The Senator is going to have a number of points to respond to. He might want to listen to them all first. If I could finish, I would appreciate it.

Mr. JOHNSTON. Sure.

Mrs. FEINSTEIN. I thank the Senator very much.

Seatbelts in the back seat. They would also not be able to require seatbelts in the back seat.

Because 90 percent of those killed in automobiles are people in the front seat, rear-seat fatalities are not likely to meet the statistical threshold that would allow the agency to require seatbelts in the back. My source for this information is the Department of Transportation's general counsel's office.

Airbags. If airbags were not already required by law, which they are, it is unclear under Dole-Johnston whether airbags could be required.

Again, this is because airbags, even though they are much safer, are also more costly than manual seatbelts or lap and shoulder belts. And again, the least cost alternative would have to be chosen.

Airline flight data recorders. This is the black box that we all read about when a plane goes down. If the standards of the Dole-Johnston bill were applied to airline flight data recorders, the FAA tells me that it might not be able to require flight data recorders on airlines.

This is because flight data recorders do not necessarily reduce immediate risks. Instead, they provide valuable information which can greatly enhance airline safety in the future.

The Glenn-Chafee bill, I believe, is far preferable. Unlike the Dole-Johnston bill, the Glenn-Chafee bill requires a rigorous cost-benefit analysis and permits both costs and benefits to be weighed intelligently, with public health and safety given its full and proper weight in the equation.

Now let me talk about petitions. The Dole-Johnston bill's petition process would allow special interests to challenge new rules and reopen existing rules, giving them unprecedented power to jam up the process.

By some estimates, the Dole-Johnston bill would allow 80 to 100 new reasons for challenging an agency rule. My source is attorneys who deal with these matters. With 80 to 100 new reasons for challenging an agency rule, agencies will be forced to divert their resources—their time, their staff, their dollars—to respond to these petitions.

Dole-Johnston would open the door to hundreds of additional lawsuits, increasing the volume and complexity of Federal litigation—some want that—and further clogging the court system.

This is one of the main reasons why the Justice Department strongly opposes this bill.

Let me give an example of some possible results.

Commuter airline safety. In recent months, there have been three crashes of commuter airlines in which a total of 40 people have been killed. Following a fatal commuter airline accident in December 1994, the Secretary of Transportation proposed new commuter airline safety regulations.

More and more people are flying commuter airlines. Having completed their own cost-benefit and risk-analysis assessment, the FAA is close to finalizing these new, urgently needed safety standards.

Again, the general counsel of the Department of Transportation informs us that they will be faced with a Hobson's choice. Let me give you an example. They are nearly ready to finalize. The language in Dole-Johnston would derail these efforts and force the FAA to either start over in order to comply with the specific least-cost and risk-assessment criteria in S. 343, or proceed

with the new regulations, knowing they will likely be challenged and held up in court for years.

So, in other words, the FAA would be challenged that they do not meet the specific new cost-benefit requirements or they could delay and redo the cost-benefit and the risk assessment. But if they move ahead, as under the present legislation, as they are prepared to do, they run this jeopardy.

Let me talk for a moment about an automatic sunset. My understanding of the legislation is that once a petition is accepted, the agency has a 3-year review period to review the rule. If an agency is unable to complete this review, a sunset of the rule would result. So the arbitrary deadline of 3 years is a trigger for sunsetting some of these regulations.

This could result in an automatic sunset of important health and safety rules. Let me give you some examples.

Automobile fuel efficiency standards.

Food labeling regulations—which have served to educate consumers.

Does every Member in this body remember food labeling regulations were very much contested by the industries affected, but they are now part of every product? People respect them, use them, and I think they are effective.

Regulations to ensure the safety of children's toys, cribs, bed clothing.

The Glenn-Chafee bill, on the other hand, accomplishes regulatory review of existing rules without creating regulatory gridlock. It requires agencies to review existing rules every 10 years, without allowing special interests to dictate the workload of Federal agencies whose mission is to protect public health and safety.

One of the major criticisms of the Dole-Johnston bill is that it is too ambiguous. Let me tell you what I mean by this.

Let us take the issue of the supermandate.

From the language of Dole-Johnston and a recent amendment, it is still unclear what will happen when the bill's requirements conflict with requirements in existing statutes.

Although the new amendment states that Dole-Johnston's requirements should not override existing statutory requirements, which will be given more weight? What legally does the word ''override'' actually mean?

Would the least-cost requirement trump the health-based standards of the Clean Air Act?

What is the impact on annual farm programs? Because the Department of Agriculture currently uses greatest-net-benefit criteria and not the least-cost alternative required under Dole-Johnston, it throws open the question of who can participate, what the terms of participation are, and what the costs will be.

The Dole-Johnston bill leaves these questions up to the courts.

Let us take the issue of judicial review.

According to the Justice Department, eight different sections of the bill provide separate statutory grounds for judicial review. The Justice Department in its letter to Senator DOLE lists the sections. Even the Justice Department is unsure about how these provisions would relate to each other.

Moreover, the ambiguous language could mean that the courts will be called upon to evaluate scientific and technical steps in cost-benefit analyses and risk assessments, issues outside of the realm of expertise of judges.

Let us take the issue of emergeney exemptions.

Another problem with ambiguity in Dole-Johnston is its definition of an emergency.

For example, the bill refers to actions to protect public health and safety or natural resources, but the Department of Agriculture has raised with us questions about how Dole-Johnston would affect an emergency such as infestation of the Mediterranean fruit fly.

Let me explain why. The Department of Agriculture believes the emergency provisions are sufficiently ambiguous and relate to health and safety, not to economic emergency.

Now, the Medfly in California is a major problem. Parts of the State have been quarantined because of the Medfly. But it is really an economic emergency because the farmers lose their entire crop when a Medfly is found. And emergency actions periodically have to be taken, such as tree stripping, aerial spraying, and so on. It is unclear under Dole-Johnston whether the Animal and Plant Health Inspection Service could act quickly enough to take the necessary steps to protect the economic interests of agriculture from pest infestations.

The inability to act quickly could cost agriculture millions of dollars in destruction of crops and loss of export markets.

Let me conclude.

I support regulatory reform that solves problems that have been identified in the regulatory system, not one that creates more problems.

I support reform that puts public health and safety first.

And I support reform that makes the Federal Government more efficient and effective.

I do not believe the Dole-Johnston bill meets that test. I do not believe it is really regulatory reform. It does not simplify the process. Instead, I believe it will burden the agencies so that they cannot do their job. And as the Justice Department has warned, it will burden the courts significantly. I simply cannot support it.

Many regulations are essential to protect public health, safety, and the environment.

I remember when we had the worst air in Los Angeles. I lived in southern California for 5 years, and I remember when I went outside, my eyes burned and teared. The air quality is better now, and that is because of clean air regulations. They have been hard on hundreds of businesses, no question about it. But you have to consider, what is the cost of 15 to 20 percent of youngsters born in the Los Angeles Basin having reduced lung capacity and, therefore, a shortened span of life. How do you measure that cost?

The San Francisco Bay area is now the largest metropolitan area of the country that complies with the clean air standards. In the early 1970's, I served on the air board. Even major oil companies have told me that the air regulations have worked.

Nobody should think that Glenn-Chafee is a copout, a soft bill, or that it will not do the job. The Glenn-Chafee bill is a very tough bill.

It represents real regulatory reform, without unjustifiably burdening the agencies or clogging the court system.

The Glenn-Chafee bill requires cost-benefit analysis for all major rules, just where we should be. It requires risk assessments for all major rules related to environment, health, and safety, just where we should be.

It requires peer review of cost-benefit analysis and risk assessments, just where we should be.

It accounts for the special needs of small businesses, allowing small entities to petition for judicial review of compliance with the Regulatory Flexibility Act.

It requires public disclosure and openness in the regulatory process.

And it limits judicial review to determine: First, whether a rule is major; and, second, whether a final rule is arbitrary or capricious.

Most importantly, the Glenn-Chafee bill cuts redtape while retaining the role of Government in protecting public health, safety, and the environment.

I believe the Glenn-Chafee substitute is a good bill, and I intend to support it.

I yield the floor.

Mr. JOHNSTON. Mr. President, the distinguished Senator from California has raised eight different points. There is a full, complete, definitive and, I believe, unassailable answer to each of these. If the Senator will allow me, I will tell her why in each of these instances, the information she has been given is dead, flat wrong.

You know, Mr. President, there is a saying that ''There is none that is so blind as he who will not see.'' I think we have, on behalf of some of these agencies that have been advising my friend from California, a terminal blindness.

Let us start with No. 1. We are told again that the Dole-Johnston bill requires the least-cost alternative. Mr. President, here is the language.

Least cost alternative, or if scientific, technical, or economic uncertainties, or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative * * * appropriate or in the public interest * * * they can do so.

Mr. President, what could fit more perfectly into these kinds of benefits

than shoulder belts, back-seat seatbelts, and airbags? As my friend from California says, an airbag is ''much safer but more costly.''

Now, I ask my friend, what is ambiguous about that? It is just as plain as the nose on your face. If it is good for safety, even though it is not quantifiable—because the value of a human life is, by its nature, nonquantifiable—you can do it.

Black boxes on airplanes. Mr. President, the same thing.

Now, how do my colleagues continue to say that this language requires the least-cost alternative?

Mr. LEVIN. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. LEVIN. Since the Senator asked and my colleagues continue to ask that question, let me try to answer that question: It is because we have repeatedly, over and over again, said that if the benefits to health and safety or the environment are quantifiable, your exception does not apply.

Now, what sense does it make to say that if the benefits to health, safety, and the environment can be quantified, that then we have to go with least cost, even though a slight additional cost would give much greater benefits?

Now, I have never understood why the Senator from Louisiana insists on the word ''nonquantifiable benefits.'' We have gone over and over that issue.

That is the answer to the question.

Mr. JOHNSTON. It is because, Mr. President, the definitions in section 621 state clearly that the term ''benefit'' means the reasonably identifiable significant, favorable effects, quantifiable and nonquantifiable.

Mr. LEVIN. Except that is limited by the Senator's language in subsection (b). When it comes to the least costly alternative, the Senator does not say ''benefit'' which is, in fact, defined somewhere else. It is limited to nonquantifiable benefit.

That is a question which has been raised for the last week, and for the life of me, I do not understand why the word ''benefit'' means quantifiable or nonquantifiable for the purposes of the act generally, but when it comes to the least-cost requirement, it is only the nonquantifiable benefits which are going to be an exception. That is the answer to the Senator's question.

Mr. JOHNSTON. Mr. President, let me ask my friend from Michigan, it is right there in the definition of section 621. If we took that word ''nonquantifiable'' out, would the Senator then agree with me that it does not require least cost, that this discretion is there? Or is this just another one of the ghosts, once we get out of here there are more ghosts to be found?

Will this solve the provision?

Mr. LEVIN. It solves one of three decisional criteria raised by my good friend from Louisiana. It addresses one of the remaining decisional criteria issues. These have been described, I think, in fairness. I think my friend would say that we have set forth in a document the difficulties with the definition ''decisional criteria,'' and this is one, I believe, if my memory is correct, one of three which have been very precisely specified. I think it does address the one specific one of the three we have raised.

For instance, another exception, if my friend——

Mr. JOHNSTON. Mr. President I want to keep this discussion to a question, and not a speech.

Again, the question is, what is the value of a human life? It is, in my view, very clearly by nature nonquantifiable. That is the reason for putting in the language.

Mrs. FEINSTEIN. Would the Senator yield the floor?

Mr. JOHNSTON. Yes.

Mrs. FEINSTEIN. The point I was trying to make is the back seat seatbelts are quantifiable. Therefore, it would not apply.

Mr. JOHNSTON. This is for health, for life.

Mrs. FEINSTEIN. But it is quantified in that only 10 percent of the people die in the back seat. The problem is in the front seat.

Mr. JOHNSTON. There are thousands of people who die in automobile accidents and many whose death could be prevented by back seat seatbelts. That is a nonquantifiable value.

We do not have to get least cost. The very idea that we say we have a rule that would save a lot of lives, that we have to go to the least cost which is front seat instead of back seat, I submit to my friend, is patently absurd.

Mr. BOND. Will the Senator yield the floor?

Mr. JOHNSTON. I am happy to yield to the Senator.

Mr. BOND. I wonder if the Senator is aware that Prof. John Graham, of the Harvard Center for Risk Analysis, who is an expert on risk assessment, started off his analysis by finding that a regulation requiring airbags, for example, was precisely the kind of regulation that was worth the cost, and that Professor Graham is currently or has just concluded a session with the media next door to the Chamber, pointing out that the Dole-Johnston bill precisely does meet the criteria which he developed in the Harvard Center for Risk Assessment as developed for determining what are reasonable regulations and, in fact, has stated that the Dole-Johnston substitute does permit the kind of analysis which would lead to the kind of life-saving regulations such as the requirement for airbags.

Mr. JOHNSTON. It is absolutely true. Professor Graham has testified before our committee. Of course it allows for that.

Mr. LEVIN. Mr. President, will the Senator yield?

Mr. JOHNSTON. Briefly.

Mr. LEVIN. The Senator raises a question. If there are 823 lives saved, according to a cost-benefit analysis, for the cost of $1 million, is that quantified or not quantified?

Mr. JOHNSTON. Generally for the life, for the 20th or 30th time, the value of the life is not quantifiable by its nature.

Mr. LEVIN. The definition in the bill says that ''if the nonquantifiable benefits to health, safety, or the environment identified by the agency,'' et cetera.

The number of lives in my hypothetical is very, very precise and is quantified. Now, since the agencies are likely to read that cost-benefit analysis and they have said that the number of lives saved is quantified in my hypothetical, therefore, it would not be eligible for this exception. Again, for the life of me, I do not understand why the Senator from Louisiana in his bill insists on the word ''nonquantifiable benefit'' when the word ''benefits'' as defined generally, is both quantifiable and nonquantifiable, and where if, in fact, benefits are quantified, it would seem to me it would be essential we allow the same exemption as when they are nonquantified.

Mr. JOHNSTON. Mr. President, I have given the answer to that question. I will give it again.

It is because the definition of section 621 includes both quantifiable and nonquantifiable and because life is, by its very nature, not quantifiable in value, although we may count up the number of lives.

Point No. 2, my friend from California says the petition process would open up 80 to 100 new reasons why attorneys could challenge rules.

Not so, Mr. President. There is one single standard, which is that you must show a substantial likelihood that the existing rule does not meet the standards of this bill, which means that the benefits do not justify the cost. It is one standard. You have one chance to do it in the 180-day period. It is just as clear as it can be. I do not know where the 80 to 100 new reasons—I suspect that there are some lawyers who were told that they are against this bill, and go make up reasons, and they did not do a very good job of making them up.

Point No. 3—I hope my friend from California is listening—commuter airlines, 40 people killed, they are ready to finalize the order, and they would have to start over.

Now, Mr. President, last week we put in an amendment specifically to deal with this question. If the notice of proposed ruling making was out by April 1, they are not covered by these requirements—not covered by these requirements. We had a long debate, and we accepted the amendment.

Now, Mr. President, these commuter airline proposals were out long, long before April 1. Now, does my friend from California understand that? Did someone say that amendment does not cover this?

Mrs. FEINSTEIN. If the Senator was asking me a question, let me answer it with this question back to the Senator.

Are they still subject to the petition process?

Mr. JOHNSTON. They are subject to a petition process, but that does not—the Senator said that they are ready to finalize, and they have to start over again, the rule would go into effect.

Mrs. FEINSTEIN. But they would have to face the challenge, because the cost-benefit risk assessment that they were doing is different from the one that would be required.

Mr. JOHNSTON. No, they do not have to do a cost-benefit or a risk assessment if their notice of proposed rulemaking was out before April 1. It is just as clear as it can be.

Let me finish answering these questions from the Senator from California.

My friend from California says there is an automatic sunset. If she would look at the section on page 33, that is section 623, it provides that, if a rule is likely to terminate and the agency needs additional time, and terminating the rule is not in the public interest, and the agency has not expeditiously completed its review, you not only can get up to an additional 2 years, but you can get a court order to tell them to complete the rule or to do other needful things.

I do not know where this automatic sunset comes from. It is not an automatic sunset. It is just not. And the words are clear.

Mr. GLENN. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. GLENN. But if the time came for the rule to expire? Let us say we are reviewing the rule, the existing rule, and the time came and went past for the review of that rule. It could sunset at that point unless you asked for this extension.

Then, if you ask for the extension, let us say it was granted; let us say it was extended. Then, when you run out of that time period, it would in fact sunset.

Mr. JOHNSTON. If everybody wants the rule to sunset it can sunset. You can terminate a rule today.

Mr. GLENN. Here is what we do on Glenn-Chafee. We say at the end of that time period the agency has to either approve the rule or start the rulemaking process to repeal it. And that lets all public comment come in, which is a much fairer process than just running out a couple of extensions and guillotining the whole thing.

Mr. JOHNSTON. There is virtually no difference between this 2-year extension provision of the Dole-Johnston amendment and in the Glenn-Chafee substitute.

Mr. GLENN. No, I disagree with that.

Mr. JOHNSTON. You provide for the court to use section 706 of the Administrative Procedure Act in order to give the needful review. We provide that the court of appeals grant such equitable relief as is appropriate. If anything, ours is broader than yours.

The point is, it is not an automatic sunset. It is just not. It may sunset, that is if everybody wants it to sunset. But if anybody cares, they can petition the court.

Mrs. FEINSTEIN. May I just read the section on its face? Will the Senator yield for a moment?

Mr. JOHNSTON. Yes.

Mrs. FEINSTEIN. Termination of the rules, page 34:

> If the head of an agency has not completed the review of a rule by the deadline established in the schedule published or modified pursuant to subsection (b) and (c), the head of the agency shall not enforce the rule and the rule shall terminate by operation of law as of such date.

Mr. JOHNSTON. But now if the Senator will look over on the previous page, subsection (3),

> An interested party may petition the U.S. Court of Appeals for the District of Columbia to extend the period for review of a rule on the schedule for up to 2 years, and to grant such equitable relief as is appropriate.

To be sure, if nobody cares, if the agency head wants the rule to terminate and the whole world wants it to terminate and nobody cares, nobody files a petition—yes. But that is a whole lot different from saying that this thing automatically sunsets.

Mr. LEVIN. If the Senator will yield on that point? Is the Senator then willing to amend his bill to say if anybody petitions a court at any time opposing sunset, that then it will not sunset? Just the act of petitioning a court? Because the Senator said ''if nobody cares.''

It seems to me that is quite, quite different from what is in the bill, which says: Sure, if you go to a court and get an order that says it does not sunset it will not sunset.

But that is not the obvious meaning of the word sunset.

Mr. JOHNSTON. It is quite clear. It is a low barrier. You have to show the rule is likely to terminate, the agency needs additional time, that terminating the rule would not be in the public interest, and that the agency has not expeditiously completed its review.

Mr. LEVIN. That is for the extension. I am not referring to the extension. I am talking about after the 2 years runs out, if a court has not ordered that rule to continue it expires.

Mrs. FEINSTEIN. Right.

Mr. JOHNSTON. The court has had a chance to review this and has given such orders as are necessary, which might be—I guess what the court would order is a schedule. Public comments to be completed by such and such a time. Final rule by such and such a time. They have full and complete discretion.

There may be some rules that, upon review by the court, should terminate. But it is not automatic. You have a chance to go to court to get that rule extended.

Mr. LEVIN. Will the Senator yield for a question?

Mr. JOHNSTON. I think I have answered that. Let me move on.

Mr. LEVIN. This is a different question. Can the court extend the period for review beyond 2 years?

Mr. JOHNSTON. No. They have already had—first of all, they have had 1 year after the expiration—I mean after the effective date of the act. They have had 3 years minimum initially, plus they have had these 2 years—that is 6 years. They cannot extend it beyond 6 years. But they can make such orders to continue the rule as is necessary.

Now, my friend from California says the supermandate language is ambiguous. For the life of me, Mr. President, the supermandate language we said was unnecessary in the first place because the bill is clear and I believe it is. But at the behest of all the people who said we have to have supermandate language, we adopted the language using their word. ''Override'' was not our word, it was the word of others.

It says, now, ''nothing in this section shall be construed to override any statutory requirements including health, safety and environmental requirements.''

For the life of me I do not know what you do to please the opponents of this provision. We first accept the principle and put it in the bill, and it is clear. But, oh, no, they find an ambiguity.

We come back and put in the precise language, the override language that they want, and it is still not good enough.

Mr. President, what can we do to satisfy the opponents of this bill? If that language is not good enough—tell me what is. It is incredible.

Judicial review language, Mr. President—my friend from California says that you ought to have review of the final agency action to determine whether it is arbitrary and capricious and that is the only purpose for which risk assessment and cost-benefit can be considered.

I invite my friend from California to look at the language. That is exactly—exactly what it says. If you can find an ambiguity in these words we will change them, because there is no ambiguity in those words.

There is a lot of ambiguity in the Glenn substitute and I can show you exactly where that ambiguity is. But there is no ambiguity in that. It adopts exactly and precisely what the Senator says. Those studies can be used solely—''solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion.''

Where is the ambiguity in that language? I am at a loss to understand.

I can show the Senator where the ambiguity in the Glenn-Chafee language is, but there is clearly not any here.

Mr. LEVIN. I wonder if the Senator will yield on that question?

Mr. JOHNSTON. I will.

Mr. LEVIN. Because the Justice Department has set forth the ambiguity in the words ''failure to comply.''

The question is whether or not those words refer to the procedural irregularities which could occur in the cost-benefit analysis or in the risk assessment.

Their letter dated July 11, 1995, is a pretty serious source, the Justice Department. They say on page 2 in a letter to Senator DOLE that there remain two basic problems which create the potential for litigation under section 625.

First, section 625 provides that failure to comply—they underline the words ''with the.'' They now substitute the words ''the rules pertaining to cost-benefit and risk analysis.''

If, in fact, that is not what the Senator's language——

Mr. JOHNSTON. That is correct.

Mr. LEVIN. ''Failure to comply with the rules pertaining to the cost-benefit and risk analysis.'' Again, they insert as to what they believe you are intending, that failure may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary or capricious or an abuse of discretion.

When this section is read in conjunction with the extraordinarily detailed and proscriptive requirements for risk assessment and cost-benefit analyses contained elsewhere in the bill, it is clear that the alleged failure to comply with any of those requirements will be the subject of litigation. Petitioners will surely argue that failure to comply with the extensive procedural requirements is itself arbitrary and capricious.

That is the Justice Department. That is a pretty solid source of a question. Since the Senator asked, ''Where is the question?'' There it is.

Mr. JOHNSTON. They do not say why it is. I must say that this letter from the Justice Department gives me real pause to consider what the quality of our people in the Justice Department is because there is no ambiguity here. They simply say it. They make an unsupported statement and anybody can say anything. But you cannot read out this the word ''solely.'' They just read it out. They go on to say—you will notice that the letters says not that ''solely'' is not there but that it will be the subject of litigation.

It is like when I used to practice law, Mr. President. Somebody would come in and say, ''Can I sue somebody about such and such?'' And I would say, ''Sure. You can sue. But the courts are not going to grant the subject of your suit.'' You know, you can summons up the witches from the briny deep. But will they come? No. They will not come. They will not. Alleging something that is clear in the four corners of the statute does not mean it has any substance. If they are going to sue on that, let me tell you. They are going to sue on Glenn-Chafee because Glenn-Chafee is ambiguous.

Let me finish these two other points, and then I want to ask a question.

Mr. LEVIN. May I ask a narrow question of my friend?

Mr. JOHNSTON. Let me return to this in just a moment. I will engage you when I finish these two other things.

My friend from California says that the emergency regulations here are not clear, that they are ambiguous. The first time I heard that raised—honestly, to say that you cannot deal with the medfly, that somehow that escapes health, safety, or the environment, Mr. President, if medfly is not included in the environment, I do not know what is; or under health. I mean we are talking about something that could destroy all the fruit in California. And that does not have anything to do with health? Who are these people over in the Agriculture Department telling you that fruit does not have anything to do with health? I mean what kind of contorted, convoluted logic, to say that fruit does not have anything to do with health? I mean it is clear, Mr. President. I mean these people who oppose risk assessment are looking for ghosts, and finding them everywhere. And you find one ghost, you say what does it take to fix that ghost? You are given the language they want, and they come back and say, ''Ah ha. But that language is ambiguous.'' The supermandate language which was unnecessary in the first place which said for a second time in words that the opponents suggested and know it is somehow ambiguous, I mean this is a no-win situation. We have to face the fact that some people are opposed to risk assessment.

Now my friend from Michigan finds ambiguity in this. I now have the Glenn-Chafee language here. I would like to ask him how this last language differs from our language when our language says that you may consider final agency action to determine whether it is arbitrary and capricious. You did, by the way, have in the RECORD the risk analysis and cost-benefit, did you not? Is that required?

Mr. LEVIN. Yes.

Mr. JOHNSTON. All right. How does this differ from what we have said?

Mr. LEVIN. I think the difference is in the preceding language. The difference is in the preceding language in Glenn-Chafee which, if an analysis assessment had been performed, the courts shall review to determine whether the analysis or assessment conformed to the ''particular requirements.'' I am wondering whether or not my friend from Louisiana might be willing to add that same language into his bill.

Mr. JOHNSTON. In the first place, I think it is ambiguous. What are ''particular requirements''? That to me means a de minimis test. Words are supposed to mean something. It means something different than ''conformed to the requirements of this chapter.''

So when it says ''particular requirements,'' I would assume that means that you need not deal with the technical——

Mr. LEVIN. ''Specific.''

Mr. JOHNSTON. ''Individual,'' but you look at the requirements of the chapter.

Would not that be fair?

Mr. LEVIN. Look at the ''specific requirements.'' But my question is since that is a narrowing language that is intended—I do not believe my friend from Louisiana has too much objection to it—assuming that one little issue can be addressed, does the Senator from Louisiana have a problem with adding that narrowing language to his bill?

Mr. JOHNSTON. I think it does not narrow.

These two proposals, I believe—you have to read them In pari materia. What I get from this last sentence is that this is a review. You have ''judicial review of the agency action.''

I submit to you that review is under section 706 of the Administrative Procedures Act. If it is not, tell me under what standard it is reviewed.

Mr. LEVIN. I think that is correct.

Mr. JOHNSTON. That is correct.

Mr. LEVIN. I believe that is correct.

Under that section, the courts have adopted the following standard, that the procedural errors ''were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.''

So that has been the interpretation under 706 by the courts, that the procedural errors ''were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.''

That interpretation is a narrowing interpretation where the new language——

Mr. JOHNSTON. There may be a court interpretation of that. But you have under your amendment a review of subsection (d), ''without observance of the procedure required by law.'' According to what you have said, you are going to review the procedure because that is what subsection (d) says. We do limit under our amendment. Our amendment is limited specifically to whether the final agency action is ''arbitrary and capricious.'' That is much narrower than that which you state. It is at least ambiguous.

Mr. LEVIN. I am wondering, relevant to the answer that I gave the Senator, whether or not the Senator is willing to incorporate that narrowing language?

Mr. JOHNSTON. No. I say the answer is no for the third time. And the reason is that it is not narrowing. It is expanding, and it is ambiguous.

Mr. LEVIN. I am referring here though now to the interpretation of section 706. You see, that has been interpreted. It has been interpreted as I just read. The language of the Senator from Louisiana has not so been interpreted yet, and is open to a much more expansive interpretation.

Mr. JOHNSTON. Look. That is precisely the same. That is an additional interpretation. ''Arbitrary, capricious, an abuse of discretion.'' That is the standard that we bring forward. We leave out ''otherwise not in accordance with law'' because we wanted to leave out the procedural review.

That is one of the most litigated and judicially interpreted phrases in all of the annals of judicial review. And it is the same precise and exact standard which you claim is provided in your review.

You see the only difference between yours and ours, we both use ''arbitrary, capricious, an abuse of discretion.'' But you have ''observance of procedure required by law.'' But you claim that either that is meaningless or that your language takes it away. So I say it adds nothing to it other than ambiguous.

Mr. LEVIN. The difference though again is that the Senator's bill has new language which has not interpreted failure to comply whereas the language, as the Senator points to in our bill, has been interpreted in a way which is significantly narrower than—may I say—what the Justice Department feels is likely or could be interpreted into the words ''failure to comply.''

That is the difference, that there is a new test, failure to comply, in the Senator's language and has not been made the subject of the kind of review under the Administrative Procedures Act.

Mr. JOHNSTON. We say, ''Failure to comply may be used solely for the purpose of determining whether that is arbitrary and capricious,'' and that differs not at all from what you have said. You allow for a review of procedures. What does it mean in subsection (d) when you state ''without observance of the procedure required by law''?

Mr. LEVIN. Would the Senator agree that the words ''failure to comply with'' intend to refer to the rules pertaining to cost-benefit and to risk analysis? That is the intention of the Senate?

Mr. JOHNSTON. Look, we have a whole big section there that speaks for itself, of course, that means the risk analysis and cost-benefit, and it means peer review. And, as I said earlier, there will be times when procedural defects, if someone calls them that, might throw the whole rule out.

Suppose it is a regulation on secondhand smoke. If all the scientists were from the tobacco industry, it would be fundamentally unfair and the scientific judgment would be important. And if I were the judge I would throw it out, even though that is a failure to comply because it would render the whole thing as an abusive discretion and arbitrary and capricious.

Mrs. FEINSTEIN. Will the Senator yield for just a moment?

The Senator had one question he asked, his first question for the list of 80 to 100 reasons. I have 144, some of which have been remedied. I would like to enter this into the RECORD, if I may.

Mr. JOHNSTON. Sure. I think that may have been put into the RECORD earlier. I think that was put into the RECORD earlier this morning.

I believe we might check with Mr. Weiss.

Mr. THOMPSON. Will the Senator yield for a question?

Mr. JOHNSTON. Yes, I will yield for a question.

Mr. THOMPSON. I ask the Senator, is it accurate that section 625 has to do with jurisdiction and judicial review?

Mr. JOHNSTON. Section 625. The answer is yes.

Mr. THOMPSON. And with regard to any question such as the one that the Senator from Michigan raised pertaining to jurisdiction and judicial review, would that section apply?

Mr. JOHNSTON. Would it apply?

Mr. THOMPSON. With regard to the questions of to what judicial review will pertain, would that be the governing section, section 625?

Mr. JOHNSTON. You mean judicial review under titles II and III of cost-benefit analysis?

Mr. THOMPSON. Yes.

Mr. JOHNSTON. The answer is yes.

Mr. THOMPSON. The question has arisen as to the language ''failure to comply'' and how that might relate to some other section. I share the concern of the Senator from Louisiana and bemusement really as to why our friends refuse to read the rest of that sentence. Instead of reading the rest of the sentence in which that phrase is contained, other sections are referred to.

Is it not true that it is ''failure to comply with this subsection may be considered by the Court solely for the purpose of determining whether or not the final agency action is arbitrary and capricious,'' et cetera?

Mr. JOHNSTON. The Senator is correct. And the critics read out of that statute the word ''solely,'' and they find ghosts everywhere. But ''solely'' means solely, and it is right there in the language. For the life of me, I cannot understand where people find ambiguity in it other than they are looking for it.

Mr. THOMPSON. I compliment the Senator in his attempt to deal with this issue. It is as if someone would say that the Senator's desk is yellow, and you can argue that it is not, and someone else can argue that it is. But there comes a point at which you want to throw up your hands, I am sure, because you are dealing with clear language, and I fail to see how anyone could misinterpret this. It has only to do with final agency action. Is that correct?

Mr. JOHNSTON. That is absolutely correct.

Mr. THOMPSON. And if there is a phrase or a couple of words within that provision that our friends think may in some way be ambiguous in interpreting another section or another phrase in another section of the statute, would still not section 625 be the ruling section as far as what judicial review is? It is a judicial review question we are concerned with here, is it not?

Mr. JOHNSTON. That is exactly right.

Mr. THOMPSON. I share the Senator's real perplexity as to what the confusion is with regard to the review in that section. It is clear that it cannot be considered independently, that you cannot take—you can look at a cost-benefit analysis or a risk assessment independently and provide your own independent judgment on that, but it can only go into the final rule in making a determination as to whether or not the final rule is arbitrary and capricious, et cetera. Is that correct?

Mr. JOHNSTON. Exactly and precisely. My friend from Tennessee puts it very well.

Mr. THOMPSON. I thank the Senator.

Mr. JOHNSTON. I am reminded, I tell my friend from Tennessee, of the old quotation from Groucho Marx, who said, ''Politics is the art of looking for trouble, finding it everywhere, and applying to it the wrong solutions.''

Mr. THOMPSON. And most of it finds its way into legislation, I venture to say.

Mr. JOHNSTON. With this bill, the opponents look for ghosts and trouble everywhere, they find it everywhere, and they apply to it the wrong solutions.

Mr. President, this language is clear, and I do not care who says otherwise. Show me where that is unclear. As I say to my friend from Michigan, his interpretation of his judicial review provision is exactly what ours says. His gives with the left hand a procedural review, takes it away with the right hand in ambiguous language, and interprets that with court cases which he says are clear. But we obviate the problem for any of that by simply saying there is no procedural review. He has a procedural review in his proposal. We do not have that in ours. That is why ours is preferable. It is clearer. It is free of all ambiguity.

I yield the floor.

Mr. DODD. Mr. President, I rise today in strong support of the bipartisan regulatory reform bill introduced by Senators GLENN and CHAFEE. Unlike the more radical Dole-Johnston proposal, this legislation would make much-needed reforms to the regulatory process without jeopardizing the health and safety of American families.

There is widespread agreement about the need for regulatory reform. Nobody wants to see American businesses, our engine of economic growth, hampered by unnecessary regulations. We must constantly monitor Federal agencies to ensure that the rules they issue are narrowly tailored and rationally enforced.

In some instances today, this is unfortunately not the case. Many residents of my home State of Connecticut have told me about regulations that are not working well. And we have all heard stories about regulations that seem to defy commonsense. The answer, however, is to change nonsensical regulations and implement some common sense reforms. We should not overreact by bringing the Government's ability to protect American families and workers to a grinding halt.

In my view, President Clinton has done an outstanding job in this area. As part of their ongoing effort to reinvent government, he and the Vice President ordered all Government agencies to carefully examine their regulatory processes and put all the regulations they have issued under the microscope. Their instructions have been to keep what works and eliminate or fix what does not.

In February, the President announced the first benefits from this effort. The administration dramatically changed the Federal Government's approach to small businesses. Paperwork requirements were cut in half, and regulators were told to take a more practical approach to enforcement by stressing compliance over punishment.

As part of this effort, the Food and Drug Administration has implemented some major reforms. The FDA eliminated 600 pages of burdensome regulations. The agency also made changes to its review process to help consumers get high-quality drugs and medical devices more quickly and more cheaply. These results are impressive, and soon other agencies will be announcing much-needed reforms.

Of course, there is a limit to what the Administration can do on its own. Since many regulations result from statutes passed by Congress, Congress must also act. Earlier this year, we made a good bipartisan start by passing the Regulatory Transition Act. It would provide a 45-day period during which Congress could review new regulations and potentially reject rules through a resolution of disapproval.

Once that process is in place, Congress would better be able to fulfill its mission of regulatory oversight. But we also need to make improvements to ensure that the regulatory process works properly before rules are issued. That is why I have cosponsored the Glenn-Chafee bill. In my view, the bill does a much better job of rationalizing regulations while protecting American families than the more drastic proposals by Senators DOLE and JOHNSTON.

The Glenn-Chafee substitute is a tough, fair regulatory reform bill. It is not a catch-all for special interests. It would give agencies the responsibility to determine a schedule to review all major rules in a timely manner, and there would be no automatic sunset. Finally, judicial review would be more limited in scope, therefore preventing an inundation of frivolous challenges from overwhelming the courts.

Many Senators have taken to the floor to highlight burdensome and ridiculous regulations. The Senator from Utah has even given us a top ten list.

I would suggest that it is always easier to ridicule what does not work than it is to point out what does. It is a simple, and often effective, rhetorical tool to string together isolated abuses to give the impression that they are the rule, rather than the exception.

I want to break from this practice, however, and speak about some of the success stories. American lives are strengthened and saved every day by good, sound regulations. ''Regulation'' has become a dirty word in some quarters, but we should remember what a regulation is: the means by which the law is implemented and enforced. Regulation is the tool the government uses to execute the people's will, as expressed through their elected representatives in Congress.

Sound regulations have saved countless lives and prevented numerous injuries in the workplace, on the highways, in the air, and in the home. These regulation have also saved millions of dollars saved in medical costs, lost wages and reduced productivity from injury. They have also immeasurably improved our quality of life.

I can speak to one example in particular. Since the passage of the Clean Water Act in 1972, water pollution control programs have been able to greatly improve our water quality everywhere, including in the Long Island Sound. The current water quality of the sound is directly attributable to these pollution control programs, which have been effective in the face of increasing population and activities in and around the sound.

Environmental cleanup in the sound has led to increased tourism, increased property values, new industry and a better economy. However, the Long Island Sound cleanup is not finished. In fact, today it faces new challenges from residential, commercial, and recreational development. It is crucial that pollution control programs remain in force for the sake of the sound and those who live around it.

I fear that continued attempts to clean up the sound would be undermined by the Dole-Johnston bill. In fact, the legislation could actually turn the clock back and reverse years of progress.

I am also troubled by other provisions and their impact on Americans' health and safety. The Dole-Johnston bill is still ambiguous about what would become of rules currently in the pipeline—those that have been issued but have not yet taken effect. The bill is also unclear as to whether agencies would have to go back and redo risk assessment to comply with the complicated risk assessment provision.

I also worry about the impact of this bill on the Occupational Safety and Health Administration's ability to prevent workplace injuries and deaths. OSHA is already unable to fulfil its mandate in a timely fashion. It took the agency 10 years, for example, to issue rules ensuring that workers would know about the dangers of the toxic chemicals in their workplace. These delays would grow immeasurably worse if, under this bill's provisions, we build even more bureaucratic delay into the system. In the meantime, countless workers could be hurt unnecessarily.

While, I appreciated some changes made to the Dole-Johnston bill, I was equally disappointed that other amendments to strengthen meat safety, OSHA and safe drinking water standards failed. No one should have to live in fear of illness or death from the E. coli bacteria or tainted water. In 1993, Milwaukee drinking water became tainted and more than 100 people were killed and 400,000 people became sick. We do not want to do anything here that would limit our ability to prevent such tragedies in the future.

I hope that in the coming days we can achieve a bipartisan consensus on regulatory reform. I believe that the Glenn-Chafee bill provides the best framework for these efforts, and I urge my colleagues to support its intent.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I ask unanimous consent to set aside temporarily the Glenn-Chafee amendment to offer an amendment by myself, Senator HATFIELD, and Senator REID.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, what is the subject of this amendment?

Mr. SIMON. We are talking about regulations that we have passed that do not make much sense. We passed a law that among other things prohibited Members of Congress from writing recommendations. If you have a member of your staff who wants to get a civil service job, it is against the law for you to write a letter of recommendation. If we see a page here doing a great job, we cannot write a letter of recommendation. This simply permits us to do that, and I hope it could be disposed of without great debate.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. SIMON. I will be pleased to yield to my colleague.

Mr. JOHNSTON. Mr. President, I am familiar with the general problem. Of course, all of us have run into this. I am less familiar with the solution, and I am totally ignorant of whether the committees of jurisdiction have had a chance to look at it and whether they approve or disapprove. I wonder if the Senator could withhold to a later status in this bill and see if this can be cleared. I see Senator ROTH. I do not know whether that is within his committee of jurisdiction. Perhaps he can speak to it.

Mr. ROTH. Reserving the right to object, Mr. President, I respectfully request that the Senator from Illinois withdraw his request.

First of all, the amendment he is proposing is not germane to the legislation before us. It does represent a very considerable change in our civil service rules that are worthy of review. But I hope that rather than bringing it up at this time, this is a matter that could be reviewed by the Governmental Affairs Committee which has jurisdiction over the matter.

Mr. SIMON. Mr. President, with all due respect, I do not think the Governmental Affairs Committee, which created this law, is likely to repeal it. But I have talked to a number of my colleagues, and I think the sentiment in this body is overwhelming that we made a mistake.

Let me tell you how I happened to get into this. This is a letter I wrote to Donna Shalala about a person who lives in an apartment building where we live:

DEAR DONNA: I am enclosing a resume for Dennis Gowie who was a hospital administrator in Washington, DC until the new administration here took over.

I do not know him well, but he lives in the same apartment building that Jeanne and I live in, and he makes an excellent impression and has a superior background.

I don't know where or if you are able to use someone with his background in your administration, but I think his background is so rich in the health care administration field that he is worthy of consideration.

Cordially.

I got the letter back with a letter saying I violated the law. A lobbyist, any lobbyist, can send a letter of recommendation for anyone, but if you have somebody working on your staff who is doing a good job and you want to send a letter of recommendation for a civil service job for that person, that is a violation of the law. We are in the process of talking about regulations that are ridiculous. This is a law that is ridiculous that is a regulation on us. I think we ought to get rid of it. I think this is a good time to do it. I am not trying to impose myself in the middle of this particular amendment, and I might say to my colleague from Ohio, I strongly support his amendment. But if I may ask my colleague from Delaware, if I were to ask unanimous consent to have this up on the floor of the Senate after the Glenn-Chafee amendment is disposed of, would that be satisfactory?

Mr. ROTH. Let me answer the distinguished Senator this way. As he knows, we are having a very serious, a very important discussion on judicial review. So I think it would be unhelpful to suddenly turn to a matter that is not even directly related to the legislation before us.

Second, I think we all agree this legislation on regulatory reform is among the most important legislation that shall come before us this year. For that reason, it concerns me if we begin to add amendments—this would be the first—that are not related.

I would be happy to assure the distinguished Senator from Illinois that we would be happy to take a hard look at this in committee. I have had a number of people mention the problems, the concern it causes them, but I think if we are going to change it—and perhaps we should—then it should be done in a manner that is most constructive under the circumstances, rather than being done on an unrelated piece of legislation.

Mr. SIMON. Mr. President, frankly, it is not satisfactory to me to have the committee take a hard look at it. I want to get a vote on it. We have crafted this very carefully, I want to assure my colleagues. In terms of it not being germane, the Senator from Delaware and I have voted for a thousand amendments that are not germane to legislation that is up. It is in a peripheral way germane.

I will change my unanimous consent request, Mr. President. I ask unanimous consent that when the Chafee amendment is disposed of, the Simon-Hatfield-Reid amendment be up for consideration at that point.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSTON. Mr. President, why does the Senator not give us a little time to work this issue? I personally have no objection to this. Rather than seal in a nongermane amendment at this point—that may be tonight—we may be able to make some progress on some other amendments tonight. If my friend will withhold, he will have a right to bring up his amendment at some other time.

(Mr. GRAMS assumed the chair.)

Mr. SIMON. Mr. President, because I am interested in adopting this, and I am not trying to cause problems on the floor, I will withhold my request at this point. But I want to assure my colleagues on the floor, I am going to bring this amendment up one way or another on this bill before it passes.

If I may add one other point, Mr. President, and I say to my colleague from Delaware, as well as Senator GLENN from Ohio, if there is some wording here that needs improvement, I am not wedded to this wording. We think we have drawn it very carefully. But if there is something that is not prudent here, what we say is that where there is on the basis of personal knowledge or records of the person furnishing we can make an evaluation of the work performance, ability, aptitude, general qualifications, valuation of character, loyalty, or suitability of such individual. I think those are the kind of things that should not present a problem. I hope we will do this.

Let me just add, I am leaving this body. This is going to have a lot more to do with the future of Senator ROTH and Senator Thompson and the distinguished junior Senator from Minnesota than it will for Paul SIMON. But I want to be free if I have a good staff person or I know someone would be good for a job, to write a letter of recommendation. My experience is those letters do not mean that much, but at least I can get it off my chest. I want to have the right to write that letter and not just leave that right to lobbyists and others.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I would like to address the subject of judicial review which my colleagues have been so eloquently discussing this morning. I think this, first of all, goes to the very heart of this legislation, because we can pass all of the requirements and all of the commonsense proposals that we want, but if it is left totally in the hands of the bureaucracy to decide whether or not they want to comply with it or how they want to comply with it, then it is meaningless. In other words, if there is not some semblance of judicial review, even for the most egregious conduct and outrageous decisions, it is, indeed, meaningless.

Mr. President, this is a nation of laws, not of men and women, the bedrock of our country. Legislation gives tremendous authority to the executive branch. That is what this body, that is what the Congress of the United States does on a daily basis: It gives great authority to the executive branch to implement the laws that are passed.

The bureaucracy, the administrative agencies—and I do not use that term derogatorily—but the bureaucracy works in that regard in adopting regulations to implement the laws that we pass. This is an awesome authority that we give to the executive branch.

We have seen in times past in this country, and other nations, that power does tend to corrupt. Executive branch authority has to be looked at carefully; it has to be looked at constantly. Goodness knows, this body, in my brief observation, seldom has the opportunity for effective oversight.

The Senator from Ohio made a very impressive statement on more than one occasion concerning the regulations of one particular regulation pertaining to the Clean Water Act—I believe, effluent emissions—where he said that from the well to the ceiling of this Chamber is 42½ feet, and those documents would go all the way from the well to the ceiling three times—three stacks of documents for one regulation.

I am not sure the Senator would share the same conclusion that I would share from that. But, obviously, we do not have the time nor the inclination to go back and revisit the laws and revisit the regulations, certainly, that have been passed up until this time. What we can do is establish some rules of the road, interject some commonsense ways for the agencies to justify future rules, future regulations.

Now, this authority that we give the executive branch is proper and appropriate in our constitutional scheme. That is what it is all about. We are supposed to have oversight of that. I think anyone who has spent any time here at all must acknowledge that that is a very tenuous situation at best in terms of effective oversight. We must look prospectively.

So we have a system where citizens who are affected by this legislation, not just depending on Congress, but citizens affected by this legislation can come into court and say basically, ''We are not being treated right.'' That is all judicial review means. They come into the third branch of Government,

an independent branch of Government—the judiciary—to make a determination as to whether or not the citizen, the private concern, is being treated right.

We can talk about special interests and all of that in a pejorative way, but there are a lot of small businesses out there, a lot of individuals, there are a lot of public interest groups who take advantage of judicial review on a daily basis. It is not just the corporate fat cats who are sitting back out there to be labeled as special interest to whom this is important. It is important to everybody. It is important to every citizen. And it is really strange and inappropriate, I think, if we carve out one or two little pieces in this entire administrative framework that we are dealing with here and say everyone has the opportunity to come into court except these particular individuals, or except in these particular circumstances, because we place so much confidence in the nameless, faceless administrators who come up with these analyses, or these rules, that we really effectively do not want any judicial review in this particular area.

Mr. President, I do not share the confidence that the opponents of Dole-Johnston seem to have in the agencies. They do a lot of good work on many occasions. But we cannot give that kind of authority, unchecked, unreviewed, to anybody, including them.

We hear a lot of talk about a ''lawyer's dream.'' We are concerned now that we are going to create new causes of action, we are going to provide a new access for somebody coming into court. I share that concern across the board. I think that in times past we have not paid enough attention to that fact. But it is a strange occurrence for us to all of a sudden be concerned about that in the middle of this debate, when we are trying to bring some commonsense reform to this regulatory maze that is costing every American family $6,000 a year, because this body, the Congress of the United States, as a whole, are the reasons for the litigation explosion in the Federal system.

It is the laws that we create, giving judicial review almost on every occasion, that create all of the litigation and all of the new regs, and we could not fill in this Chamber with all of the legislation that we have passed that give people new causes of action and new motivation to come to court, and new ways to burden the Federal court system. If you have a civil case anymore in the Federal court system, and many places in this country, you may as well forget about it for a good long while. Under the speedy justice acts, criminal cases take precedence. And that is because of what we have done here in this body. Not only do we constantly create new causes of action in this body, but on many occasions we finance it ourselves. We not only say you can come into court and get judicial review, which effectively is being denied, I submit, by the Glenn-Chafee amendment, but we have created all sorts of legislation where the Government will either pay the attorney's fees, or there are attorney's fees shifting. In other words, what could be more of an inducement to people to bring lawsuits and to come with new litigation than to say you are going to get your attorney's fees paid for? Yet, we do that time and time again. We are the cause of all of that.

There are the civil rights cases, which we are familiar with; Fair Housing Act, Fair Labor Standards Act; Age Discrimination in Employment Act of 1967; Equal Credit Opportunity Act; Civil Service Rehabilitation Act; Individuals With Disabilities Act; Religious Freedom Restoration Act; Violence Against Women Act. There are awards for attorney's fees in tax cases that we give to citizens if they prevail in certain tax cases. Awards for attorney's fees we give in certain lawsuits against the States, and in certain lawsuits against judges. We not only give them a cause of action, and we not only give them judicial review, we see that their attorney's fees are paid.

There was the Federal Contested Elections Act; Government Employees Rights Act of 1991; Equal Access to Justice Act; Freedom of Information Act and Privacy Act; Government in the Sunshine Act; Whistleblower Protection Act of 1989; Civil Service Reform Act of 1978; NEPA; Commodity Exchange Act; Packers and Stock Yards Act; Perishable Agricultural Commodity Act; Federal Crop Insurance Act, Animal Welfare Act; Agricultural Unfair Trade Practices Act; Plant Variety; Immigration and Naturalization Act; National Aeronautics and Space Administration Act; National Defense Authorization Act; Bankruptcy Act; Federal Home Loan Bank Act; Home Owners Loan Act; Housing Act of 1959.

These are all acts not only where we are creating new causes of action and giving people access to the court, in addition giving them judicial review, but we are seeing that their attorney's fees get paid if they prevail. That is a very loose definition.

I will continue: National Housing Act; Federal Credit Union Act; Federal Deposit Insurance Act; Bank Holding Company Act; Bank Tying Act—whatever that is—Farm Credit Amendments Act; Real Estate Settlement Procedures Act; International Banking Act; Expedited Funds Availability Act.

Mr. President, there are hundreds. I will not take the Senate's time with reading all of them. But there are literally hundreds of pieces of legislation that this body has created where not only do we create new causes of action and provide judicial review; no question is usually ever raised about full judicial review. All of these are important subjects. I am not saying they were bad legislation in every case; certainly not. I am just saying that it is mighty strange that in the middle of all of this, when we want to say let us supply a little common sense to the regulatory process, let us require a cost-benefit analysis, just put down on paper whether the benefits justify the costs—as we have seen here, we are not talking about a money situation here. Benefits are defined as social benefits, as well as economic benefits. Costs are defined as social costs—social costs, as well as economic costs; not only direct benefits and direct costs, but indirect benefits and indirect costs. What could give an agency more discretion than dealing with something that might be described as an indirect social benefit? That is great leeway.

Yet, we want to limit judicial review when they make these commonsense assessments that we say since we cannot and will not go back to the 3-foot stack of regulations and deal with them, which is what we really ought to do, we are going to at least try to apply some commonsense standards as far as we go forward. That is all this is about. Judicial review is the norm. It is the way it ought to be. The Administrative Procedures Act provides broad, broad discretion and judicial review. We keep talking about this explosive litigation situation that is going to develop from all of this. Not so. We create no new causes of action with the Dole-Johnston bill.

The judicial review is already contained in the substantive legislation. I must say, it seems in times past when we gave authority to an agency, we have readily granted judicial review. But when we are putting certain restrictions on an agency and making them justify what they do, some seem to want no judicial review.

The opponents say not only too much litigation; second-guessing scientific opinions, the rulemakers will be tied up in knots. Well, the Senator from Louisiana, I think, has very, very effectively addressed most of those. I share his concern that if something is repeated long enough, saying that it will cause an explosion in litigation and that will tie the courts up in knots, some people will get to believe it. It is just not true. Repeating it does not make it true.

Section 625, no new causes of action. Final agency action is the only thing that can be looked at. Cost-benefit analysis will be included in the directive. Only if the final agency action is arbitrary or capricious will it be overturned. In other words, no independent second-guessing or analysis of the cost-benefit analysis. It is just a part of the picture. It is part of the overall picture, and it can be considered. It can be looked at.

Mr. President, I submit that this provision is narrower than the law is now. Traditionally, any procedure defect can be appealed and be a ground for upsetting the agency action. Here it is only if it is a part of an overall review, if the final agency action is arbitrary and capricious. It cannot be considered independently. Under the old law if something was faulty, if the cost-benefit analysis was faulty, that kind of a

defect would be reviewable and enough to overturn the opinion.

Actually, it seems to me that as far as this new cost-benefit is concerned, we have a narrower scope review than we traditionally have for other defects in the process. Of course, 706 is just the same as under the Administrative Procedure Act that we have been dealing with for so many years, except with section (F).

As I understand it, we have to look at (E) in conjunction with that. It is a substantial evidence test in (E), substantial support test in (F). Substantial evidence test, as I understand it, where there is a record administrative law judge, substantial evidence test is something that has been applied now for years and years on the record, and I think the thinking with (F) is apply that to the rulemaking process, the same kind of review, substantial support test, and do we want a rule that does not have support in the record in the rulemaking, substantial support? It is not a de novo review by any stretch of the imagination. The court must show deference to what the agency has done under that kind of scheme.

Will there be more litigation? I submit certainly not. I submit nobody knows, certainly. Nobody knows. There is always litigation. There always will be litigation. Trying to pinpoint the cause for a particular lawsuit cause of action is a fruitless process.

I submit a very good case could be made for the proposition that it will result in less litigation, Mr. President, instead of more, because now at least the courts have some fairly objective criteria to look at.

Cost-benefit analysis: Do the benefits justify the costs? Are the costs justified by the benefits? I think it could go to make better rules. I think the agencies have been engaging in this process all along, anyway, in some rough form.

Any rule that we put down, certainly, I hope that agencies would consider how much benefit are we going to get out of this and what will it cost? By putting it down somewhere—with the tremendous prejudice in favor of the agency action going in, the tremendous hurdles a petitioner has to overcome—putting it down somewhere and having developed some case law on the subject, and it becoming more objective, I submit that people would be less likely to attack it because it is less nebulous than it has been in times past.

Will there be more litigation? There is very limited interlocutory review. Now, if an agency decides that something is not a major rule, it does not meet the $100 million threshold, then there is review under those circumstances. But I think the Senator from Louisiana hit it on the head. It looks to me to be in the interests of both sides, if the determination is made that it is not a major rule, to go ahead and get that resolved.

Otherwise, we go on through the process, all the way to the end, get to the final rulemaking, get there, then an appeal is taken. Then if it is determined it was, in fact, a major rule, have to go all the way back, and it affects everything that has been done, and you have to start back from scratch.

This is not a problem, interlocutory situation, that gives the petitioner some great advantage.

What about second-guessing scientific study and that sort of thing? I submit, Mr. President, that right now we have courts in a position under the arbitrary and capricious standard and all the other standards under 702 that courts are making some kind of rough determination on scientific principles of some kind, scientific analysis, totally unequipped in many cases, I am sure, to do it. But under the Dole-Johnston bill, we have peer review. We actually have an opportunity for the experts to come in and interject their analysis into the process.

Again, my understanding is that this is nothing new in the well-crafted rules and procedures that are done now under current law. Peer review is not a stranger—National Academy of Science—and the agencies are well equipped to do this peer review. They are well equipped to do the cost-benefit analysis. There is nothing new with regard to that. Now they must do it in every instance where we have a major rule.

So the courts now are having to deal with this scientific evidence test. Actually, this legislation will assist the court because of the additional peer review. The courts will not be second-guessing the agency's actions here. I share with the proponents of the Glenn-Chafee substitute that we do not want to be able to have people come in and tie up legitimate rulemaking functions at the drop of a hat and stop everything in its tracks. Nobody is propounding that.

What is being done here, it looks to me, the problem with it, it is such a modest proposal, it is such a modest first step to interject an element of common sense into a process that I think just about everybody in this country has concluded has gone too far. Every once in a while things gets out of hand. We have to get back toward the middle of the road a little bit. I think that is what this legislation does in a very modest way.

Increased delay, tie the court in knots—it is simply not in the legislation. These objections cannot be identified and pinpointed with regard to any particular section in this legislation in the Dole-Johnston amendment. Under ordinary circumstances, you cannot get a stay, you cannot come in, you cannot file a lawsuit and stop the proceedings. That simply does not happen except in rare circumstances.

What are those circumstances? Same old, traditional circumstances that we have already had in other situations. That is, if a petitioner can overcome the very high burden of proving that he is likely to prevail ultimately in the case, if the petitioner can show that he will suffer irreparable injury, not just injury but irreparable injury, if he can show it is in the public interest, if he can do all of those things, he might stay the proceedings for a while. Would we not want him to?

If petitioners can show that they are likely to prevail, that they are going to suffer irreparable injury, is there anything wrong, within that limited circumstance, with being able to have a stay? It is a very, very rare situation, indeed, where that would come into play. So there is no tying up of the courts. There is no stopping of the courts. There is no keeping the forward move of the rule from making progress.

What are the hurdles? Look at a situation that a petitioner has. Look at what a petitioner has to go through in order to challenge a rule.

First of all, you have the definition of benefit and the definition of costs that we referred to a little bit earlier. I think we need to go back to that, because I think we get away from that. The definition applies throughout for both subchapter 2 and 3. The definitions are ruling. The definitions are standard, and apply every time these terms are used anywhere in the act. It says:

> The term ''benefit'' means the reasonable, identifiable, significant favorable effects including social, environmental, health and economic effects that are expected to result directly or indirectly from implementation of a rule or other agency action.

So, when people talk about seatbelts, or people talk about food, and people talk about all those things that are vital concerns to all of us—certainly you can consider the noneconomic benefits. You can consider the social benefits. You can consider the environmental benefits. You can consider all of the health benefits. And, if an agency does a halfway decent job of addressing that and putting it down on paper, look at the hurdles that a petitioner has to overcome in order to challenge that. Consider the court's natural hesitancy to second guess an agency under those circumstances; a natural hesitancy to second guess technical evaluations.

Then you have the harmless error rule. Suppose you go through all that. OK, the agency messed up. OK, even by the loosest definition of benefit or cost, the benefits did not outweigh the costs so the petitioner has crossed that first hurdle. Then he has to get by the harmless error rule, and that is no mean feat. That has been with us for a long time. It has made a lot of agency actions prevail in circumstances they otherwise would not.

So, those are the hurdles that a petitioner has. Now, under the Glenn substitute, first of all, for something that has to do with judicial review I am struck by the consistency of what is not subject to judicial review. I think we have five sections here and in four of them the emphasis is on what is not subject.

Section 623(a): ''Shall not be subject to judicial review in connection with,'' et cetera.

''(b) shall not be subject to judicial review in any manner''

''(d) court shall not review to determine whether,'' et cetera.

''(e) shall not be subject to judicial consideration separate and apart,'' et cetera.

I will go into the details of all this later. But is it not strange that in something that is supposed to deal with judicial review, that the entire emphasis seems to be on what is not subject to judicial review? It looks like we are leaving a very, very narrow window indeed.

Let us look at the provisions of the Glenn-Chafee substitute. In the first place you have (b), ''any determination by designee of the President or the director that a rule is or is not a major rule shall not be subject to judicial review in any manner.'' It just stops in its tracks, if I understand it correctly. That can just stop everything in its tracks right there.

It says in (e) that ''a determination by an agency that it is not a major rule shall be set aside by a reviewing court on clear and convincing evidence.'' But who gets to decide last? If an agency made this determination and the President or the director made a subsequent determination, or contemporaneous determination, would that not be the end of it?

In other words, the executive branch has total discretion, it looks to me like, in determining whether or not the process goes forward in terms of cost-benefit analysis, risk assessment or whatever, because they can decide, no matter how clear it is to most people that it meets the $100 million threshold—they could just say that it does not and nobody can review that. Nobody can question that.

Indeed, ''If a cost-benefit analysis or risk assessment required under this chapter has been wholly omitted for any major rule, a court shall vacate the rule and remand the case for further consideration.''

In other words, if you have what has been decided and what has been determined is a major rule, therefore under the law requiring the agency to make the cost-benefit analysis, but the agency just says I am not going to do it, they suffer the severe penalty of having the court simply remand it back to them for further consideration. I do not know what happens if they do the same thing again and the court remands it back again, and again and again.

The rest of it I think the Senator from Louisiana has addressed. It is essentially very similar to the Dole-Johnston bill in that basically it is still an arbitrary and capricious test. I did not even mention that in the hurdles that a petitioner has to overcome, which is a very, very tough test for a petitioner to have to overcome to prove that something is arbitrary and capricious.

So, Mr. President, I think it just comes down to whether or not you want to do anything about this problem. I think it comes down to whether or not you want risk assessment, you want to have a cost-benefit analysis. Because, if you do, it cannot possibly mean anything. It would be totally meaningless unless you have more of a redress for people who are aggrieved.

I might point out, in this legislation business, it seems to me we often go off on the basis of whose ox is being gored at the moment. What if you had a President who did not like any rules? Should we cut off people, public interest groups, whatever, from judicial review and petitioning and doing what they would want to do in order to get effective rules passed and make sure they are not just dismissed out of hand and erroneous determinations as to whether or not something is a major rule? Some President could decide everything is going to be a major rule, no matter how minuscule it is. If he was really an enemy of rules and regulations, he could just decide everything is going to go be a rule and make everyone go through the process.

It is a two-way street if we look at it that way, and I urge the Dole-Johnston amendment does that. It is a modest proposal to try to get our arms around, in some way, and make some progress towards interjecting some simple, some commonsense principles into this regulatory mess that we have gotten ourselves into and do not seem to know how to get out of that is costing the American taxpayers' $6,000 per year per family and going up. And then get on about the business of passing laws that will be subject to real oversight. I think that is one of the most important provisions of this bill. I think it gives us another look at these rules that are going to be passed, now, and give us really an opportunity to focus on our oversight responsibility.

We do pretty good at turning these laws out but it seems to me like we wake up a few years down the road and get a deluge of citizens coming in here saying you did not know it at the time but look what you have done to us. And then it is too late to do anything about the regulatory mess we have created.

We have an opportunity here to do something about that and I urge the defeat of the Glenn-Chafee amendment and the adoption of the Dole-Johnston amendment.

I yield the floor.

Mr. COCHRAN. Mr. President, we finally have, as the distinguished Senator from Tennessee said, the opportunity to legislate an end to the unnecessarily costly consequences of Federal Government regulations.

This legislation that has been introduced by the Majority Leader, which I am cosponsoring, will make it necessary to consider the cost effectiveness of regulations that seek to manage the risks to health, safety, and our environment. In short, it will help ensure that the benefits derived from Federal regulatory actions justify their cost.

The Federal regulatory burden has become too heavy and too expensive. There are several recent studies that confirm this. One is a March 1995 publication of the Harvard School of Public Health which analyzed 200 Federal programs and revealed that many highly cost-effective programs were not fully implemented, while other highly cost-ineffective programs were widely implemented. It suggested that a reallocation of resources to more cost-effective programs could save an additional 60,000 lives per year at no increased cost to taxpayers or to the private sector. The conclusion was that we could save the same number of lives, but with a $31 billion annual savings to the American people.

In an American Enterprise Institute policy paper, Christopher DeMuth has described Federal regulations this way, and I quote:

> They are much more costly than all the domestic discretionary spending programs of the Federal Government combined. Regulatory agencies can tax and spend freely in pursuit of environmental quality, product safety, and other regulatory goals, and the costs they impose are free of the budget and appropriations controls that constrain spending programs.

That is the end of the quote.

The Heritage Foundation's ''A Citizens Guide to Federal Regulation'' estimates that the cost of Federal regulation to the economy exceeds $500 billion, or about $5,000 per household each year. EPA has estimated that environmental regulations alone in 1990 cost the U.S. economy about $115 billion. As a result of the Clean Air Act amendments and other new requirements, spending by business on environmental protection is expected to exceed $200 billion annually within 5 years.

In 1993, the President's National Performance Review estimated that complying with Federal regulations cost the private sector $430 billion per year. This is almost 10 percent of the gross national product.

One of the more frequently cited economists on the costs of regulation, Thomas Hopkins of the Rochester Institute, has estimated the direct Federal regulatory burden for 1994 to be approximately $630 billion.

So whatever estimate you choose, it is a big one. The burden is enormous and, without action on our part, it is only going to get bigger.

One sector of our economy that has come under special pressure from environmental and related Federal regulations is American agriculture. Excessive regulation of agriculture has become in some instances counterproductive to our efforts to maintain the safety and integrity of the U.S. food supply.

Some Federal regulations not only impose unnecessary and burdensome costs on farmers, but they make our farm and food products less competitive in world markets. The Delaney clause, for example, enacted in 1958,

has been strictly interpreted and enforced in such a way that it has imposed enormous expenses and burdens while providing very little benefit to the public. In many instances, the Delaney clause has become an obstacle to the implementation of sensible food safety policy because it has prohibited the use of production efficiencies that pose little or no risk to the public.

This problem was compounded by the 1992 Ninth Circuit Court of Appeals ruling which invalidated the EPA's negligible risk interpretation of the Delaney clause and required a zero risk interpretation that threatens to restrict the use of up to 80 widely used crop protection tools. These tools are important in the production of a safer, abundant, and affordable U.S. food supply.

EPA Administrator Carol Browner has acknowledged that the pesticides affected by this recent court decision pose no risk to public health. Lynn Goldman, Assistant Administrator of the EPA, has admitted that the Delaney clause is an outdated approach for protecting consumers from pesticide residues and that the loss of selected pesticide uses may affect the price or seasonal availability of particular commodities.

Furthermore, in 1993, the EPA stated that the potential economic impact of a strict interpretation of the Delaney clause could reach $1 billion per year.

In rice-producing States, like my State of Mississippi, uncontrolled rice plant diseases can lower crop yields by 75 to 80 percent. The fungicide benomyl, which is used to control rice blast on 15 to 30 percent of the rice acres in the southeastern States, is the only fungicide registered for that purpose. Under a strict interpretation of the Delaney clause, EPA intends to prohibit the use of benomyl on rice. This will result in higher costs to farmers and consumers and will provide no real improvement in food safety.

Mr. President, the outdated Delaney clause rests on a flawed premise. It assumes that a carcinogen at any level of exposure can cause cancer. Because of recent advances in research, we know that premise is wrong. With current technologies that allow the detection of minute quantities of potential carcinogens that were previously undetectable, the number of substances subject to the Delaney clause expands with every advance in analytical chemistry. We are now able to discover in food previously undetectable trace levels of materials used in production and distribution that are not added to food in any conventional sense, yet are food additives under the law.

Reform of the Delaney clause, as provided for in this legislation, is essential to preserving a safe, abundant, and affordable U.S. food supply. And it is long overdue.

Numerous other excessive and costly regulatory burdens imposed on American agriculture will also be relieved by this legislation. In a recent Washington Times op-ed article, I described several examples where the Department of Agriculture, the Department of Interior, and other Federal agencies have gone beyond the intent of Congress in the regulatory requirements imposed on agriculture.

The Farm Bureau Federation estimates that U.S. agricultural interests spend between $18 and $20 billion per year complying with Federal regulations. This amounts to roughly 35 percent of total net farm income in our country.

The Delaney clause, and all the other Federal regulations, that are squeezing the American farmer and food industries must be subjected to a reasonable, fair, and sound science-based assessment of the real risks to safety, health and the environment.

While such reform will help the entire economy, it will help U.S. agriculture in particular, and it will reduce costs to consumers without endangering their health or our environment.

Mr. President, the American people want reasonable reform of the current regulatory system. This legislation provides such reform, and I urge my colleagues to support it.

I also ask, Mr. President, unanimous consent that the op-ed article I mentioned be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, April 4, 1995]

(By Thad Cochran)

REGULATORY RELIEF FOR FARMERS

The regulators have run amok in America and nowhere have things gotten more out of control than on the farm.

As long as the two key ingredients in food production remain land and water, agriculture will be in the eye of the environmental storm. But it is not—and has never been—a struggle between pro- and anti-environmental forces. As entrepreneurs whose very livelihood rests on the careful stewardship of an ecological system, farmers have long supported measures to protect our natural resources. But those same farmers, who are already up against the uncertainties of the weather and heavy foreign government subsidies, now increasingly have to ''do battle'' with regulators in Washington.

The reason? Because in too many cases, regulators at the Environmental Protection Agency, the U.S. Department of Agriculture, the Interior Department and other agencies have gone far beyond the intent of Congress.

In an effort to produce a better coordinated approach, EPA has combined, or ''clustered,'' certain air and water standards. The goal of avoiding incompatible and contradictory rules is laudable. But the result is another case of regulatory overkill.

EPA's ''cluster rule'' for the pulp and paper industry is the most costly environmental rulemaking ever proposed for a single industry. It is estimated that compliance with this rule will cost more than $11 billion despite the solid progress already made by forest and paper companies. The industry, for example, without the cluster rule has reduced dioxin in effluent by 92 percent since 1988.

The treatment of wetlands is another case in point. Despite a recent Memorandum of Agreement among several federal agencies, the process of defining a wetland and delineating sites remains confusing and contentious. Farmers now dutifully file requests for permits to make modifications to portions of their own property that have been designated wetlands. Almost half of the applications filed for a permit involve an impact on less than one acre.

Bob Floyd of Muncie, Ind., had a ''wetland'' mysteriously appear on his property when a local business accidentally cut a drainage pipe. Federal regulators swooped in to protect this ''wetland'' and forced the 80-year-old farmer to stop farming. Because of this wetland area (which has since dried up), Mr. Floyd may have to sell the land his family had farmed for a half-century.

This might be funny if it were an isolated incident. But it is not. At a Senate Agriculture Committee hearing in February, witness after witness came forward with examples of farmers tangled in red tape, thousands of dollars incurred in filling out forms and family farms being threatened by the Endangered Species Act or the Clean Water Act or some other regulatory requirement.

The American Farm Bureau Federation estimates that U.S. agricultural interests spend between $18 billion and $20 billion per year complying with federal regulations. To put things in perspective, that figure is roughly 35 percent of total net farm income in the United States. If this estimate is correct, and if anything it is probably low, farmers spend $2 complying with government mandated regulations for every $1 they receive in price supports.

Clearly, things have gotten seriously out of hand. Fortunately, the utter frustration with this and other problems manufactured in Washington was powerfully communicated through the elections last November.

Congress is now under new management—and a wide range of issues, including the need for regulatory relief, are being addressed. Last month the Senate Government Affairs Committee reported two bills (S343 and S291) which would require federal regulatory agencies to prepare a cost-benefit analysis (for major regulations) and incorporate that analysis into the rulemaking process. Before new rules could take effect, federal agencies would have to (1) determine that the benefits outweigh the costs, and (2) determine that the proposed rule will provide a greater benefit to society than any other alternatives.

If this all sounds like plain old common sense, the similarity is intentional. We have gotten to the point in this country where farm and landowners are almost considered guilty until they can prove their innocence. The burden of proof should be on the regulator and the place to start is to require the regulators to prove that the rules are necessary, that they benefit the public at large and generally pass the common-sense test.

All this is compounded by overlapping, and in some cases competing, jurisdictions among federal agencies. It is common for a farm enterprise or agriculture business to have to deal simultaneously with the EPA, the Army Corps of Engineers, the Transportation Department, the Agriculture Department, the Occupational Safety and Health Administration, and others.

There is a groundswell of support in Congress to slow the regulatory machine until Washington can ''get its act together.'' The House of Representatives has already passed a bill to place a moratorium on significant regulations, retroactive to November of last year. A week ago, the Senate passed legislation giving Congress 45 days to review proposed major regulations. The Senate bill establishes a ''fast track'' review process and provides that any regulation can be blocked if both the House and Senate disapprove it

within the 45-day time frame. The congressional review would apply not only to any future rulemaking but retroactively to any significant regulation issued since Nov. 20, 1994.

Obviously, the differing House and Senate bills will have to be reconciled in conference; but it is clear we are going to restrain the regulators.

Even though commodity prices generally were solid last year, net farm income is at its lowest point in a decade. If American agriculture is to prosper, it will have to increase productivity and capture new foreign markets. That is a challenge under normal circumstances. But it will be almost impossible if the American farmer, increasingly tangled in a destructive web of red tape, is forced to spend a third of his net income complying with government rules. Unfortunately, that is the track we are on in this country. It is a course that I and many others in Congress are determined to reverse.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I thank the Chair.

It is a pleasure to rise today to discuss with you an opportunity to provide relief from many of the threats to the safety, security, and well-being of those individuals who populate our urban centers. Our cities today, especially our inner cities, have become areas of hopelessness and decay and despair.

Consider these facts:

America's urban areas suffer a murder every 22 minutes, a robbery every 49 seconds, an aggravated assault every 30 seconds. In a survey of first and second graders in Washington, DC, the Nation's capital, 31 percent reported having witnessed a shooting; 39 percent said they had seen dead bodies; 40 percent of low-income parents worry a lot about their children being shot, compared to 10 percent of all parents who worry about their children being shot; 1 out of every 24 black males in this Nation, 1 out of every 24 black males in America, will have his life ended by a homicide.

A report in the New England Journal of Medicine stated that a young black man living in Harlem is less likely to live until the age of 40 than a young man in Bangladesh, perhaps the poorest country on Earth.

The roots of these pathologies are various. They are at least partly cultural, partly economic, and partly social. These challenges, these problems, are about values. They are about knowing right from wrong. But they also have something to do with hope and meaning. For too many of our inner city residents today, hope and meaning and opportunity, are unknown words of uncertain origins. Many people are born, live, and die without ever knowing what it is like to have a job, to feed a family, and to fulfill their dreams.

In a number of the high schools in central cities, for example, the dropout rate rises as high as 80 percent. In 1990, 81 percent of young high school dropouts living in distressed urban areas were unemployed. In that same year, more than 40 percent of all adult men in the distressed inner cities of America did not work, while a significant number worked only sporadically or part time. Today, half of all residents of distressed neighborhoods live below the federally defined poverty threshold. In 1993, that was $14,763 for a family of four.

Why do we have these problems in our inner cities? Well, as I have indicated, there are a variety of reasons. But I submit that one of the significant reasons for all of these facts is what I would call a regulatory redlining of our urban centers, a series of pervasive regulations promulgated by a variety of agencies that have literally driven jobs from the center of America's urban environments. As a matter of fact, the older the site is, the longer there has been industry, the longer there has been manufacturing, and the longer there has been industrial activity, the less likely the site is to qualify with and escape from the kind of onerous regulations which drive away jobs in those settings.

As well meaning as many regulations may have been, the reality is that they have been incredibly destructive of opportunity in our inner cities.

Now, there is a great debate about regulation and the regulatory burden in America. But the people who live in our inner cities bear not only their portion of the $600 billion in regulatory costs that are built into our products, they also experience and sustain a cost of regulation which is substantially higher in many circumstances. It is a cost of lost opportunity. It is a cost of poor health. It is a cost of the lack of personal security and safety. It is truly a major challenge.

This last year, I had the opportunity to spend days during the year working in different settings around the country. I was delighted to work in one manufacturing concern in the city of St. Louis. It was called the Anpaul Window Co. They make windows for home construction, for remodeling as well as new construction. It is a thriving business, about 40 employees, one of those small business Horatio Alger stories that inspire us all.

I noted when I went to spend my day there making windows with its work force, that well over half the employees are minorities. It was a good work force, very productive. The business was thriving. As a matter of fact, it was growing. And it became clear that the success of the business was going to be a part of its downfall, because they needed to expand. And they could not expand on their site in St. Louis because of regulations. There were four EPA test wells around the facility, and the owner said he would not take that facility on a bet. He simply could not expand on that site.

So in order to expand—and I should also mention that the building had been designated as historic and the doorways were not wide enough—the owner of the business had to move from the city, in the urban center of St. Louis, where the challenges are strong and the pathologies are very pervasive, where we have all the problems that attend the urban core of America's cities. And in order to grow and in order to be what they wanted the business to be, they had to move the business to a suburban setting 50 miles from St. Louis.

I thought to myself, here is the Federal Government, which should be finding a way for the people in the very heart of our cities, who have families in need of the income and support, who have young minds that need the example of working parents, who have the potential but do not have the productivity, actually working against economic stability. And I thought the reason we do not have the productivity is too frequently the onerous rules and regulations that have finally accumulated at the core of our urban centers. Regulations that were designed to promote health and safety and well-being, have redlined development out of our urban centers and have sent development and jobs packing to the green fields of suburbia. They have left an empty, hollow core in the urban centers of America and have defined a circumstance where 1 in 24 black males will probably be shot at some time during his life, according to the statistics we read.

I thought to myself, these are well-intentioned regulations, the regulations about cleanup and the fact that you should be able to eat the dirt in order to avoid being poisoned by contamination. But the truth of the matter is that the regulations in these older parts of Missouri's cities and of America's cities drive development out of the place where we need development most.

They do so with very interesting and laudable concerns about the environment and about health and safety. But, frankly, the statistics tell us that the individuals who are poor and inhabitants of our urban centers have a lot more to worry about in lead poisoning from a .38 than they do from other contaminating sources. And the truth of the matter is we have to find a way to bring jobs back into our cities. The risks associated with unemployment are very substantial, they are much greater than the risks associated with a door that may be 36 instead of 38 inches wide, or do not comply with a particular statute. The risk of being shot in a drive-by shooting is much more pressing and demanding and challenging than the risk of being contaminated by dirt beneath the parking lot, especially dirt which was contaminated in some previous industrial experiment.

Under the guise of noise abatement, we have merely exchanged the sounds of productivity for the sounds of silent factories. The crack of cocaine has been the sound of productivity in our cities' centers. The wail of a family in the wake of a siren, the echoing clang

of a cell door—those are the sounds that have abated the noise of factories, and I think we need to look carefully at what the comparative risks are in these cases.

We literally have a substantial group of people in this country at the core of our urban centers and in our cities, whose opportunities have been diminished, whose safety has been impaired, whose health has been undermined, whose security has been threatened, and whose longevity has been shortened because of well-meaning but misapplied regulations.

Our challenge is to find a way to make our urban centers places where people can thrive again. But inappropriate, or excessive regulation, without understanding the real risks that exist in the center of our cities, make that a very serious challenge.

That is why I am going to be proposing an amendment to this Regulatory Reform Act which I will entitle ''The Urban Regulatory Relief Zone'' amendment. This amendment will provide an opportunity for the mayor of a city, any city over 200,000, to appoint an Economic Development Commission. This commission would have the chance to assess regulations which impair the health, safety, and well-being of the citizens by keeping jobs out of the zone; and to weigh whether or not abatement and waiver of those regulations could give rise to an influx of opportunity which would provide an improvement in the health, an improvement in the security, an improvement in the education, and an improvement in the longevity of the individuals in that zone.

I very seriously hope that these commissions of economic development would have a view toward mobilizing the resources, not just as it relates to the Federal Government and Federal regulations, but as they would relate to State and local regulations as well.

It is time for us to understand that regulations, sometimes misapplied, have effectively redlined development out of our inner cities and subjected our inner-city population to a set of risks that are far greater than the risks which the regulations sought to abate. It is time to empower cities to apply for such waivers. It is time to say to the cities, ''We will let you help make a decision here about what the real well-being of your citizenry is.''

Then the commission would send that waiver application to the Federal Government and ask that the approval from an appropriate agency be made in order to protect the city from further harm. In my judgment, this is a chance for us to change the way in which regulation has literally created a crisis, or participated in the creation of a crisis, at the center of American cities. We can no longer afford regulations which redline American cities away from development.

We have to give cities a chance to say to individuals: ''You can come in here, you don't have to be responsible for all the past sins of prior incarnations of industry here; you don't have to make sure the dirt under your parking lot could be eaten by an individual for his or her entire 70 years of existence. We want to have you here because we know that an employed person is safer than an unemployed person; an employed person, the statistics tell us, is healthier than an unemployed person; that employed people are far less likely to be killed in driveby shootings than unemployed individuals; that where there is economic vitality and industry, there is a far greater chance that the young people will persist in their education, avoiding the dropout situation; and that we will upgrade what happens in our very inner cities.''

I believe that it is time for us to look at those regulatory concerns as it relates to the well-being of the individuals in the areas in which those regulations are imposed. Where there are impositions of regulations which actually undermine the safety, undermine the security, undermine the employability of individuals, where the imposition of a regulation does not enhance safety or security or health or well-being or longevity, it should be an option that the Economic Development Commission of that particular urban center could submit an application to the Federal Government and say, ''Why don't we abate this particular requirement, because in so doing, it will elevate the opportunity of our citizens to be productive, to be healthy, to be secure and safe, to be examples in their community for the kind of industry and productivity which will inspire young people to stay in school and inspire individuals to have hope and to understand the meaning which can change the destiny of the inner cities of America.''

Mr. President, I thank you for this opportunity. I look forward to submitting the urban regulatory relief zone amendment to this legislation in the hours ahead, and I hope that we will have the good judgment to share with the people of the United States the opportunity to make sound decisions about improving the standing of those who are at peril in our inner cities, the core of our largest urban centers. And I hope that we will give them the opportunity to get relief when that relief will increase their likelihood for safety, for health, for security, for productivity and for longevity.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ABRAHAM). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, we have talked about other costs, we have talked about complexities, we have talked about the costs of business, we have talked about costs of everything except costs to the Federal Government of this legislation. It seems to me that in any consideration of this legislation, that has to be taken into account.

I do not know exactly what it will cost the taxpayers for the Dole-Johnston bill to be carried out by the agencies as it stands right now. But I would like to read a letter to the chairman of the Judiciary Committee, Senator HATCH, from the Executive Office of the President, Office of Management and Budget on July 7. It applies to the original Dole bill. There have been some changes made since this letter was written, but I think the changes that were made make it even more expensive. But I would like to read this letter in its entirety, because I think it is extremely important that everyone understand exactly what it is we are getting into.

Alice Rivlin, Director of the Office of Management and Budget, writes as follows:

DEAR MR. CHAIRMAN: On April 26, 1995, the Senate Judiciary Committee reported S. 343, the ''Comprehensive Regulatory Reform Act of 1995,'' for floor consideration. The Congressional Budget Office estimated that the bill, if enacted, would impose additional discretionary costs of at least $180 million annually. We have worked over the last several weeks with both the program and the budget offices of agencies with major regulatory programs, in order to arrive at our own estimate of the potential costs of the bill as reported by the Judiciary Committee.

CBO indicated in its analysis that few of the agencies had sufficient time to determine the additional costs that the bill would impose. Further, it assumed that the sole feature of S. 343 that would make issuing new regulations more costly was the lowering of the threshold for cost-benefit analysis to $50 million. Our request to the agencies, however, asked them to consider not only the lowering of the threshold but also the many additional analytic steps, such as risk assessment and peer review, that S. 343 would require agencies to undertake in situations where they are not now carried out. In addition, our analysis, unlike CBO's, contemplated the additional costs that S. 343 would impose, both by significantly expanding existing litigation opportunities and by substantially expanding the coverage and the requirements of the Administrative Procedures Act. Our analysis, unlike CBO's, also included the costs involved in implementing the many new petition processes that S. 343 would create for reviewing existing regulations.

Based on our more extensive analysis, we have arrived at a cost figure that is significantly larger than CBO's. Our preliminary estimate is that S. 343, as reported by the Judiciary Committee, could impose discretionary costs of approximately $1.3 billion annually and consume the time of approximately 4,500 full-time employees. Although there have been some modifications made to the bill since it was reported by the Judiciary Committee, we believe this information remains useful in light of CBO's estimate.

I hope this information is useful to you as S. 343 approaches the floor.

Sincerely,

ALICE RIVLIN,
Director.

I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the Record, as follows:

DEAR MR. CHAIRMAN: On April 26, 1995, the Senate Judiciary Committee reported S. 343, the ''Comprehensive Regulatory Reform Act of 1995,'' for floor consideration. The Congressional Budget Office estimated that the bill, if enacted, would impose additional discretionary costs of at least $180 million annually. We have worked over the last several weeks with both the program and the budget offices of agencies with major regulatory programs, in order to arrive at our own estimate of the potential costs of the bill as reported by the Judiciary Committee.

CBO indicated in its analysis that few of the agencies had sufficient time to determine the additional costs that the bill would impose. Further, it assumed that the sole feature of S. 343 that would make issuing new regulations more costly was the lowering of the threshold for cost-benefit analysis to $50 million. Our request to the agencies, however, asked them to consider not only the lowering of the threshold, but also the many additional analytic steps—such as risk assessment and peer review—that S. 343 would require agencies to undertake in situations where they are not now carried out. In addition, our analysis, unlike CBO's, contemplated the additional costs that S. 343 would impose both by significantly expanding existing litigation opportunities and by substantially expanding the coverage and the requirements of the Administrative Procedure Act. Our analysis, unlike CBO's, also included the costs involved in implementing the many new petition processes that S. 343 would create for reviewing existing regulations.

Based on our more extensive analysis, we have arrived at a cost figure that is significantly larger than CBO's. Our preliminary estimate is that S. 343, as reported by the Judiciary Committee, could impose discretionary costs of approximately $1.3 billion annually and consume the time or approximately 4,500 FTEs. Although there have been some modifications made to the bill since it was reported by the Judiciary Committee, we believe that this information remains useful in light of CBO's estimate.

I hope this information is useful to you as S. 343 approaches the floor.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. GLENN. Mr. President, let me further comment on this. In the bill as it originally came out, CBO estimated $180 million. OMB analyzes what would occur here with the additional petition processes and so on, and after canvassing some of the agencies, as Director Rivlin says, as much information as they could get, estimates that it would cost about $1.3 billion and with 4,500 full-time employees.

Let me point something out. Their analysis was based on the $50 million base, and since that time, the Nunn amendment, which was added to this, adds a substantial number of regulations that would have to be reviewed. In the original legislation that was addressed by Director Rivlin, major rules would probably have been somewhere between 200 and 500, something like that. We do not know exactly, of course.

Now, under Glenn-Chafee, the major rules are estimated to be between 100 and 200. With the Nunn amendment addition, the estimate is to go up to between 500 and 800 rules that would have to be reviewed. The Rivlin estimate from CBO of $1.3 billion in annual costs and the time of approximately 4,500 full-time employees to comply with S. 343 was made before the Nunn amendment on small business was passed. So that at least doubles the number of rules that would have to go back for reconsideration, with all the analysis that goes along with that.

I know that just the number of rules cannot be equated directly to a specific budget figure. But I think it is fair to say that the cost of the bill will be similar to the cost of the Dole bill, as it emerged from the Judiciary Committee, which is $1.3 billion. You have to add onto that the estimate of approximately doubling the number of rules and regulations that would have to be reviewed again, if you add the additional requirement of review put forward by the Nunn amendment. I am not saying it would double that $1.3 billion, but it certainly it is going to add a considerable amount onto it. I think it would probably add at least half to it. I do not base that on anything except to say that if you double the number of rules, we should add another $400 or $500 million onto that $1.3 billion. It seems that would be logical.

The point I am making is that we do not get this for free. We want regulatory reform. But at the same time, a vote for the Dole-Johnston bill is a vote to spend a minimum of $1.3 billion, by OMB estimates, in additional Government paperwork. What reform. That is not much of a reform, it seems to me.

So I think we have to think about this. We have not provided anywhere in this legislation for that $1.3 billion annually that would be required, nor for the 4,500 full-time employees. We are in the process, as a result of the President's national performance review, of reducing the civil service rolls in this country, and doing pretty well with that reduction, also. They are trying to cut down 272,000 civil service positions over a 4-year period. The last count I had, as of about 30 days ago, we had actually reduced around 110,000 and are on schedule to probably accomplish that full 272,900 reduction by the end of this year. That comes at a time when, at least in these departments, we are going to have some 4,500 additional FTE's just to carry out the analysis that would be required by the Dole-Johnston bill, at a cost of about $1.3 billion, and that was before the Nunn amendment took the threshold way down, and probably, as near as we can estimate, doubled the number of reviews that would have to be made.

So I think, as we consider this, we want to consider whether we are also going to up the appropriation, whether that would be required, whether we are going to up the number of FTE's to do the job that would be required on this legislation.

I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I would just observe that the additional cost identified by the distinguished Senator from Ohio as applying to the Dole amendment would also apply to the Glenn-Chafee amendment. My reason for stating that is that the threshold for a major rule in the Dole-Johnston amendment has been increased to $100 million. That, of course, is exactly the same as the threshold for the Glenn-Chafee bill.

I also point out that there is no question, at least in my judgment, that the Nunn-Coverdell amendment—the amendment offered by the distinguished Democrat from Georgia—would also be offered to amend the Glenn-Chafee bill if it were believed that that legislation was going to successfully move forward.

So, in large part, either proposal will face some increased cost. As I say, in my judgment, it would be in somewhat the same ballpark. But I think the important point to understand is the cost of the current regulatory maze of the private sector and local government. It is estimated that the current regulatory requirements cost this country something like $600 billion a year, a very substantial amount.

It is further estimated that this roughly breaks down to a cost of $6,000 per American family. Again, a very substantial cost to the typical American family.

One of the goals of the legislation that we all on both sides of the aisle are in support of in either amendment, agree that regulatory reform is critically important. One of the principal purposes of our legislation is to get a better bang for the buck.

Hopefully, we can do even a better job in providing clean air and clean water, at a lesser cost, because of the regulatory reforms we are proposing.

While it may be there may be some additional cost on the Federal Government, that should be more than substantially offset by the benefits and lesser costs that will be experienced by the private sector.

For that reason, while it is true that regulatory reform may result in some additional cost to the Federal Government, that is substantially true of both proposals, whether one is supporting the Dole-Johnston amendment or the Glenn-Chafee.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Mr. President, I rise to speak about the bill before the Senate, S. 343, and the vote that will

occur at 6 o'clock p.m., a little more than half an hour from now, asking that we invoke cloture on this bill.

Mr. President, the last week has seen an intensive debate and a very thorough debate on not just the bill but on the values and ideals and processes that underlie our whole regulatory process.

While I feel from my perspective that we have made some progress, at least by my standards, have improved the bill, I intend to vote against cloture because I still believe that this bill, as amended, so fundamentally alters the regulatory process and increases the obstacles and hurdles within that process, that it does damage to the laws—the public health, consumer protection, environmental protection laws—that underlay those regulations.

Mr. President, this has been, I think, a very important debate in which, in general terms, all Members here in the Chamber have expressed our support of two basic goals. One is to acknowledge that the regulatory process in many ways has grown top heavy.

Senator HATCH has given the list of the bottom 10 regulations which often seem silly and off the mark. Senators GLENN and KERRY and others have occasionally set the record straight on some of those bottom 10.

The underlying point of Senator HATCH's list, I think, is agreed to by everyone here, which is that in some sense our regulatory process has become too complicated. It takes too long to render decisions. It often costs more than it should cost.

I think we also have another set of values that we share. This is where we part company. Some think the reforms of the regulatory process get in the way of the protective goals of the underlying environmental protection, consumer protection, public health and safety laws that generate those regulations.

Remember, the regulations do not arise out of nowhere. They arise, for the most part, out of laws that we adopt. We adopt those laws because we are responding to problems. We are, in the best exercise of governmental authority, making judgments about certain threats to the well-being of people in this country that they cannot protect themselves from.

In some measure, in our increasingly complicated world—much more complicated than when this country was founded—we have extended what we lawyers like to call the police power of the State to encompass not just the traditional prohibitions of criminal acts and punishment for commission of those acts, but to protect people from being assaulted, for instance, by toxic chemicals in the air or in the water, substances that, if you listen to the public health experts—and they are credible ones—can do as much damage to people as criminals can.

So we have adopted this law to protect people, whether it was against food poisoning or protecting children from iron toxicity, whether it is to ensure that mammography done in this country is safe and reliable, whether it is to protect us against the now legendary cryptosporidium, a microscopic parasite found in drinking water. This is why we adopt regulations. I hope this debate has reminded us of those underlying purposes.

It seems to me S. 343, as amended, continues to present serious obstacles to the realization of those protective goals. I must say that, as I go around the State of Connecticut, I find that one of the aspects of our Government that people I speak to most support, even though they are upset about much else that we do here, is the work we do to protect the environment, to conserve the great natural resources that the good Lord has given this country and, in fact, this world, to protect them from threats that they cannot see in the water they drink, in the food they eat.

They want us to continue to do this. And I am convinced that in the layers of hurdles—in the petition process set up within S. 343, as amended, in the decisional criteria, these four very high hurdles that regulations, protective regulations will have to jump over in order to stay valid, in the judicial review process, and so much else that is in this bill—that though the bill has been improved, it still needs to be improved more, or we will inadvertently, I believe—I hope unintentionally—have made it much more difficult for Government to protect people from threats to their health and safety and well-being that they cannot protect themselves from.

The best way to describe and explain all this is with concrete examples, and let me give a few. The Clean Air Act requires that the standards for air quality be set at a level to provide protection of public health with an adequate margin of safety. I would guess, if we asked constituents in our district whether they want us, when it comes to protecting public health, their health, from pollution in the air—whether they want us to do that with an adequate margin of safety, they would say yes. Sure, people are cost conscious. Obviously, they are cost conscious. But when it comes to their health, their parents' health, their children's health, I think they would want us to err on the side of that health, not on the side of the cost to the source of the pollution.

Acting on guidance from Congress, the Environmental Protection Agency has set the standards for air quality, public health, at levels which err on the side of caution, at levels which do protect not just average people but also sensitive subgroups of the public such as the elderly, who are less able, because their bodies are older, to withstand pollution in the air; persons who have more respiratory problems; or children; or such as subgroups in the population who already are ill for one reason or another—they may have asthma, they may have heart disease. They are particularly vulnerable to dirty, polluted, toxic air.

Although the statute on its face, the Clean Air Act, does not prohibit consideration of costs, EPA, for 25 years, has implemented the statute based on health protection and health protection alone. And the courts have upheld EPA's approach.

For example, one of the pollutants that EPA regulates is sulfur dioxide, which comes from coal-burning utilities and smelters primarily. EPA long ago determined that its standard for sulfur dioxide emissions in the air should be set, not just to protect the average group of healthy Americans, but to protect asthmatics as well.

There has been a 40 percent increase in asthma in our country in the last decade. That is a topic for another discussion as to why that has happened. My internists at home in New Haven said to me that he sees what he is calling an epidemic of asthma, particularly among kids. The standard EPA sets is at a level to protect asthmatics. The Clean Air Act requires that EPA periodically review this standard. And, under the bill before us, S. 343, as amended, industry—that is source of pollution who feel they are adversely affected by this sulfur dioxide standard—can petition to have the standard reviewed under the new decisional criteria, those four high hurdles that I have talked about.

I respectfully suggest that the likely result, under this series of decisional criteria, would be that despite the long history I have talked about and the court decisions, EPA could no longer set the standard for sulfur dioxide at the level to protect as much public health and as many people in our country, including those with asthma and respiratory problems, as they do now.

Instead, it would be required to look at the benefits from avoiding medical treatment for asthmatics and weigh those against the compliance costs imposed on the sources of the pollution, the smelters and other facilities.

Inevitably, this will mean that the standard will not be set at a level that will protect the asthmatics who are protected now. And that is a lot of people. That is millions of people. It is our kids. It is our spouses. It is our parents. For the first time, the degree to which EPA is permitted to set these standards for air quality based on health protection would be compromised. And even if EPA could avoid this strict cost-benefit weighing part of the test that I have just described, one of the other sections of the decisional criteria is the least-cost section, which says that you have to do what you are supposed to do at the least cost possible, would require a weighing of costs which, again, would compromise the health-based standard but, more to the point, compromise the health of a lot of people in this country.

Finally, because I see other colleagues on the floor, let me give a specific example of why the second decisional criteria, the least-cost alternative, could significantly reduce protection of public health and the environment.

In 1991 EPA conducted a comprehensive cost-benefit analysis of options for the rule it was issuing that dealt with lead in drinking water—lead in drinking water. When you open the tap and drink the water, what about the lead in it? Several options had been suggested ranging from simply telling people to run their water before drinking it, which reduces the problem in some but not all cases, and depends on assuring that, for instance, children and others will run the water for a couple of minutes before drinking.

Mr. President, I do not know about your kids—they are younger than mine—but I do not think mine will run a tap for a few minutes before drinking.

Other alternatives for dealing with lead in water, drinking water, would require universal use of a corrosion-inhibiting chemical and the replacement of all lead-contaminated pipes or setting an ''at-the-tap'' standard for lead. So there were three or four alternatives available to EPA for dealing with this problem, the real public health problem of lead in drinking water.

EPA conducted a detailed cost-benefit analysis for three alternative rules, all of which had benefits greater than costs. EPA chose the middle-of-the-road option, requiring some but not all water utilities, water companies, to use a corrosion-inhibiting chemical and requiring replacement of the worst lead pipes, but over a 22-year schedule to phase it in.

It is very likely that under S. 343, if it is adopted as amended, the least-cost alternative would have been to issue a much more limited chemical treatment rule.

Under the alternative selected by EPA, the benefits have been enormous. For a little more expenditure, we have received and obtained much greater health benefits, assuring, according to public health experts, that thousands of children would not have elevated blood lead levels and others with vulnerability to lead because of heart conditions would be saved, quite literally, from heart attacks.

That EPA middle of the road rule had far, far greater benefits than the least-cost alternative that would be driven by S. 343, as amended, in terms of public health—and that means children have higher blood lead levels, they lower IQ's. It is pretty hard to calculate the cost of that, but in my opinion it is incalculable.

EPA would simply not have been able to adopt the sensible midcourse alternative it selected if we adopted the bill as amended. That would not have made good common sense and obviously it would not have made good public health.

Mr. President, I see other colleagues on the floor. I will yield the floor. But to say again what I said, at the beginning, we have made some progress on this bill. But there is a way to go before we accomplish both real regulatory reform and cut down the red tape, which all of us want to do, and the Glenn-Chafee bill does very sensibly. But what we have not done yet is assure that the public health, environmental protection, and consumer protection, which generated the adoption of the laws that gave birth to these regulations, are going to continue to be adequately protected. And until that is so, I will vote as I will in a short while against cloture on this bill.

I thank the Chair. I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I see the Senator from Rhode Island wants to go forward for a few minutes. I ask unanimous consent that he proceed for 4 minutes, and that I then be recognized for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. CHAFEE. Thank you. I want to thank the distinguished Senator from Massachusetts for permitting me to go for 2 minutes.

I would like to make a couple of points. One of the major objections to the Johnston bill is the so-called judicial review. We have dealt with the language of the Johnston bill and judicial review before. What is the language that is so objectionable? It is in section F. It says, ''The reviewing court shall hold unlawful and set aside agency action findings or conclusions found to be without substantial support in the rulemaking file viewed as a whole.''

That is complicated. But it is a very high standard to meet. It is very, very difficult. And what it means for those who are implementing the rule—any of the agencies, whether it is EPA or whatever it is—it is very hard for them to have a rule that cannot be thrown out by the courts under this definition. We have done this before.

In 1982, Senator BUMPERS had an amendment that came out of the committee when we were doing regulatory reform in that year, which had exactly the same language that we—I and others on this side—are objecting to, and that Senator HATCH and others put into this bill.

So we had a Republican administration. We had a Republican Senate, and that group—the administration and the Republican Senate—vigorously objected to the language that was in that bill, the so-called ''Bumpers language,'' which is exactly the same as the Hatch language today.

So Senator BUMPERS came up with an amendment. He changed that objectionable language. And the Vice President of the United States, on February 23, 1982, George Bush, wrote the letter.

DEAR DALE: We have received your proposed amendments to S. 1080 and the explanation of those amendments. We believe that these changes, as explained by what would be legislative history, are significant improvements.

On and on he goes.

So the language that I am objecting to, and others who will not support cloture tonight, is the exact same language that a Republican administration, that a Republican Senate, objected to in 1982. It was objectionable then, it is just as objectionable now.

I do hope that cloture will not prevail.

I thank the Chair. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. HATCH. Will the Senator yield for a request?

Mr. KERRY. I yield for a request.

Mr. HATCH. I ask unanimous consent that following the remarks of the distinguished Senator from Massachusetts that I be permitted to speak a few words on this before cloture.

The PRESIDING OFFICER. Is there objection?

Mr. GLENN. Reserving the right to object, Mr. President, would we still have the vote at 6 o'clock?

Mr. HATCH. Oh, yes.

Mr. GLENN. We have both leaders who wish to speak.

Mr. HATCH. That is right. I will be short. We want to allow enough time for both Senators to have a few remarks.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I congratulate my colleague from Rhode Island for his comments, and also the Senator from Connecticut, who in a detailed fashion has summarized why this bill is not prepared to be passed on by the Senate, and why colleagues sought to oppose cloture at this point.

Mr. President, this bill flies directly contrary in its current form to the principles espoused by Philip Howard in ''The Death of Common Sense,'' and to the whole concept of reform. Reform is supposed to create simplicity. It is supposed to create fairness. It is supposed to reduce the paperwork and reduce the opportunities for litigation.

This bill in its current form is a lawyer's and an accountant's dream.

Mr. President, here is list of 88 new opportunities for litigation in the Dole-Johnston bill before us. This bill is supposed to simplify. We keep hearing in the U.S. Senate about how there is too much litigation. However, there is no such opportunity for litigation in the current law for these items. But under this bill, here are the opportunities for litigation—88 new opportunities—for lawyers to dream up ways they can come into court. This is not speculative. This is by the very language written in this bill.

For instance, section 622, (c)(2)(C)(1), ''Did the agency adequately identify alternatives that require no government acts?''

If somebody wants to sue suggesting that they did not, all they have to do is make the claim, come into court, and that review will take place.

''Did the agency adequately describe attempts to verify quality, reliability and relevance of science?'' Section 622, (d)(2)(A)?

I can go through the entire bill where, because they are opening up procedure to review—not just substance but procedure—you are going to tie up an agency in court.

Mr. President, they will come back and say, ''No, no, no, we do not want the procedure to be reviewed.'' And they will suggest that there is language here that precludes that.

I respectfully say that is not the case; there is sufficient ambiguity that lawyer-legislators on both sides are arguing about it. And the question is, therefore, if their intent is not to create that avenue of judicial review, if their intent is to do as they say, to preclude it, then why do we not make it clear in this legislation? Every attempt to try to make it clear has been rebuffed.

So I respectfully suggest that, just as in the area of least cost alternative where they suggest that there is not a rigid rule precluding judgment and discretion by the agency head, there will be sort of discretion. We are saying no. The language of this bill provides a rigidity, and we do not want that rigidity in this particular legislation.

In addition, I would like to point out that in today's Washington Post, there was an article that talked about being buried by paperwork. It had the amounts of money, and how the regulatory paper trail leads nowhere. But interestingly enough, almost every dollar in this article was in the SEC and the IRS, both of which are exempted under the Dole-Johnston bill.

So the very place where you find the problem, they have exempted it. Then they come in and say, well, there is $500 billion worth of cost to our economy. Yet the GAO has shown that study is totally faulty, that in point of fact there is only about $225 billion total cost to a $1.6 trillion economy. All the additional costs that they throw into their pot are costs that are related to what we call transfer payments and process costs that have nothing to do with the regulatory process itself.

So, Mr. President, if we want to simplify, which we do, you have an alternative. It is the Glenn-Chafee, or Chafee-Glenn bill. It is similar to a bill that came out of committee 15 to nothing in a bipartisan form. That is a bill which has review. It is a bill which has a cost-benefit analysis. It is a bill that has risk assessment. But it does not create a rigid rule that denies discretion or judgment to the agency heads who deal with these issues.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. KERRY. I am happy to yield for a question.

Mr. JOHNSTON. Is the Senator aware that the original Roth bill that came out of committee unanimously, as the Senator says, required a review of rules?

Mr. KERRY. Yes.

Mr. JOHNSTON. This is the exception. There is no rule that needs to be reviewed, unless the agency head wishes to in his sole discretion, and that is not reviewable.

Mr. KERRY. The Senator is not only aware of it, but that is the standard which we would embrace in this bill. But because of the judicial review standard that the Senator from Louisiana is pressing and because of the petition process which the Senator from Louisiana is pressing, we totally inundate the agencies.

What is going to happen here, Mr. President, is that a process that is supposed to simplify is going to swamp the agencies. The EPA currently has a very clear graph that shows how many hours go into rulemaking from business. Business currently spends about 70,000 hours putting together the reports for the process of rulemaking. Under this process, you are going to triple or quadruple the amount of industry input. You are going to at least double the governmental input, and there will be no commensurate increase in resources or budget.

The effect will be they will be swamped, because there is a clever little clause in here that says if you do not get your review done in 3 years, we are going to throw the rule out. So first they swamp the agency. Then they provide a whole bunch of opportunities for litigation. And they say if you have not performed your responsibility within that span of time, which is impossible, we throw the rule out anyway. That is stripping America of 25 years of effort to try to have a reasonable process of regulation.

I wish to give all colleagues time here, but I just say, Mr. President, I am prepared to vote for a reasonable reform bill that has a reasonable judicial review standard, a reasonable cost-benefit analysis and risk-assessment approach, but that does not tie the Government in knots and that does not take the current 1-page Administrative Procedure Act approach to rulemaking and add an additional 64 new pages from the Dole-Johnston bill.

That is not simplification. That is not reform. That is an opportunity for lawyers to have a field day in court and to prevent us from ever having a rule that addresses the public safety and health needs and environmental needs of this country.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, what 343 requires is that when there is a major rule, if there is going to be litigation, it has to be the whole rule. It cannot be nit-picked to death as has been suggested under the language there. And every major rule is litigated now. So there is nothing to those arguments that have been argued here.

With regard to what Senator CHAFEE said, Senator JOHNSTON does, indeed, amend section 706 of the Administrative Procedure Act to apply the ''substantial evidence test'' to informal—notice and comment—rulemaking.

I wish to point out that this test is hardly novel. It has been codified in the Administrative Procedure Act for almost 50 years—section 706(2)(E)—as the standard to apply in adjudicatory rulemakings.

Moreover, Congress has in specific statutes required the substantial evidence test for informal rulemakings since the late 1960's. Just some examples include the Occupational Health and Safety Act of 1970 and the Magnuson-Moss FTC Improvement Act of 1975.

In 1981, the Administrative Conference of the United States recommended that section 706 of the APA be amended to include a substantial evidence test for informal rulemakings. That was recommendation No. 81–2. The Administrative Law Section of the American Bar Association made a similar recommendation in 1986.

Also, in 1981, the Senate approved the Bumpers amendment to S. 1080, the precursor to present S. 343 that passed the Senate 94 to 0 in 1982. That amendment's language applying the substantial evidence test to informal rulemakings is virtually similar to the language of Dole-Johnston. I might add that the American Bar Association strongly recommended including the substantial evidence test for informal rulemakings in S. 343.

The substantial evidence test is the appropriate standard for judicial review when examining whether the factual basis of the rule justifies the rulemaking. Contrary to assertions made by some of my colleagues, the substantial evidence test is not so stringent as to impede the implementation of rules.

It is now recognized that the substantial evidence test is the functional equivalent of the standard arbitrary and capricious test. Indeed, a number of courts and legal commentators have concluded that, when applied to court review of factual conclusions made by agencies, the distinction between the substantial evidence test and the arbitrary and capricious standard is largely semantic.—*Association of Data Processing Service Organizations* v. *Board of Governors*, 745 F.2d 677, 684 (1984) (and cases cited therein).

Nonetheless, adoption of this test is important because it is the appropriate standard for courts to employ when reviewing factual determinations. In other words, the substantial evidence standard aids the court in determining whether an agency abused its discretion in promulgating a rule.

I notice the distinguished majority leader is here.

Mr. President, just let me say this. Despite all of the hysterical rhetoric

that we have heard on this bill, this bill is simply a commonsense bill. It is a reasonable effort to rationalize the regulatory process. Meaningful regulations in the areas of health, safety, and environment are important and necessary. This bill does nothing to repeal or change needed and reasonable regulations. All this bill does is require a reasonable process whereby we ensure that the benefits from these regulations justify the costs. We have a Government out of control. This is a modest attempt to try to get it back into control, and I hope everybody will vote for cloture on this bill.

I yield the floor.

Mr. DASCHLE. Mr. President, I know that we are about ready to cast the vote. I will be very brief.

As we have said over and over throughout the debate today and over the course of the last several days, the fact is that there has been a very good debate about a number of extraordinarily complex issues, issues that ought to be aired, issues that ought to be raised in the context of both regulatory reform and public safety.

We have done that. We have offered amendments. We have had a good debate. There have been very few quorum calls. There is no filibuster. I hope all colleagues consider this vote very carefully and vote against cloture this afternoon.

Let me remind my colleagues that 38 amendments, so far, have been offered—38 amendments over the last 7 days or so. Of the 38 amendments that were offered, 24 of those amendments were offered by proponents—24 of them. Only 14 of the 38 amendments which have been offered have been offered by those who are not supporters of the legislation. Of those, 7 were adopted, 3 were rejected by a 2-vote margin, 2 were withdrawn, 1 was the only one to lose by more than 10 votes, and 1 is pending right now, the Glenn-Chafee substitute.

So if you take the substitute away, 13 amendments are all the amendments that have been offered on our side to date. And of those, very few were rejected—in fact, only one was rejected—by more than 10 votes.

I think the point of all this is very clear. We are making a good-faith effort to try to work through this issue in a meaningful way. Even if the substitute is declared germane, as I understand it has been, there are a number of additional relevant amendments, amendments that we have been waiting to offer, amendments that we hope to be able to propose at some point in the not-too-distant future, most likely even with time agreements. We are willing to do that, but if we are going to be able to offer those amendments, invoking cloture now would preclude a lot of Members from having the right to do so.

So I urge our colleagues to oppose cloture, recognize that we are not filibustering, we are not extending debate unnecessarily, recognize that the amendments that have been offered in large measure have been offered by those on the other side, and recognize as well that as complicated as this is, it is imperative we continue to try to work through the bill, as difficult as it may be.

I believe we can do it. I am still optimistic that we can accommodate all Senators in trying to achieve our objective of reaching some ultimate compromise on this legislation and vote in a bipartisan manner. But we cannot do that today; we cannot do that by cutting off debate. We cannot do that by precluding Senators' rights to offer amendments as they have been doing now for about a week.

I yield the floor.

Mr. DOLE. Mr. President, tonight we take the first step toward bringing this important debate to a close.

Despite all the horror stories, despite all the distortions, despite the desperate attempts to shift the focus of this debate, I want to make very clear that I intend to fulfill the mandate given to us by the American people—and bring some common sense to the regulatory process and get the Government off our backs.

On one side of this debate stand the defenders of the status quo. Regulatory reform is a direct threat to their smug assumption that Washington knows best and that it cannot do any better. The defenders of the status quo can only win by delay and distortion.

On the other side of this debate stand those Senators—and I must point out that we have Republicans and Democrats—who understand that we have to provide relief to American families and small businesses who bear the burden of overregulation. We understand we can do so in ways that protect health and safety.

Though I do not really expect to close off debate tonight, it is important to understand that we intend to win, and that it is our obligation to pass meaningful regulatory relief, not just some watered down version that accomplishes nothing.

Therefore, if cloture is not invoked tonight, we will vote again on cloture tomorrow. And if we do not succeed at that time, we will vote again to close debate on Wednesday.

The issues at stake are too important. Unfortunately, those issues have often been obscured by those like Ralph Nader and President Clinton who repeatedly make basic factual errors about this bill.

The reality is not so hard to understand:

This bill has been amended over 100 times, incorporating comments and suggestions from the Clinton administration and Democrat and Republican Members;

This bill largely codifies President Clinton's Executive order on the regulatory process;

This bill incorporates whole sections of S. 1080, a bill passed unanimously in the Senate in 1982;

And perhaps most important, this bill includes close to 20 different protections for health, safety, and the environment.

These are the facts. Those facts—as opposed to the twisted version reported by the media—suggest that those who oppose our reforms have some explaining to do. Those who seek to stall reform will have to answer to the American people.

And in the end, I am confident that we can pass this bill with broad bipartisan support.

Mr. President, I would be very willing to sit down with the Democratic leader and figure out how we could bring this matter to a conclusion tomorrow or even on Wednesday. But this is the seventh or eighth day we have been on this bill. It is a very important bill. Many of the amendments offered by proponents were in response to requests from those who opposed the bill—this would make it better, this is a compromise, work it out. There have been a number of amendments. In fact, we took a major amendment of the Senator from Ohio, who was prepared to debate it for 2 hours. We said we will take it. It is the sunshine amendment, a major amendment.

We have taken a number of amendments. We have addressed the 180 days problem. We have addressed a number of major problems, as I understand it.

So now there are 267 amendments pending at the desk, first- and second-degree amendments—267 or 260-some. How do you finish a bill with that many amendments? In fact, it is worse than the tax bill where sometimes you have 80 or 100 amendments. And I must say some of those amendments are on this side so they are not just coming from that side. I do not want to leave that impression. Most are coming from that side but some are coming from this side.

We thought last week, or last Thursday or Friday, according to our list—not everybody would tell us what their amendments were—there were probably two or three on this side and five or six on the other side, including the major substitute which we are on right now.

I do not want to shut off anybody. If we cannot get cloture, we cannot get cloture, we will not have regulatory reform. That is not a threat, but if you just take out the calendar—there are already people complaining about not getting a full August recess and there are probably going to be more and more complaints as we get closer to August 4. I would like to accommodate most people to get out at least a part of August. But if we want to spend more time on this bill than we should, do not be coming around to the majority leader saying, ''Oh, you can't take away our August recess.''

I do not want to take away anything. I have a lot of places I can go in August, would like to go in August, other than Iowa and New Hampshire.

[Laughter.]

We are not going to get cloture. We have four or five absentees. We have two or three who have not seen the light on this side yet, maybe four. But despite all the horror stories, despite all the distortions and despite the desperate attempt to shift the focus of this debate—in fact, the President said on Saturday on the radio show if you adopt this bill, there are going to be more air crashes. And this is the same President a week ago who said we should be more civil, we should not make statements like this, we should treat everybody with civility. And he charges Republicans, on a bill like this, with air crashes, dirty meat, dirty water, dirty air, two or three other things. He did not have much time on the air. He mentioned three or four ridiculous, ludicrous, exaggerated statements like that.

We think we have made a lot of progress. We think this is a bipartisan effort. If I have missed something somewhere along the line, then I think we should try to address it. I am willing at any time to set down a schedule of amendments to finish this bill. I am ready to vote tomorrow morning, tomorrow noon on the big substitute. Maybe that is one way. Once we determine how that is going to come out, maybe that will move the debate.

I think we may as well vote. We do not have the votes. Those who are not ready for regulatory reform will vote ''no.'' Those who are will vote ''aye.''

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the hour of 6 p.m. having arrived, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the pending substitute amendment to S. 343, the regulatory reform bill.

Bob Dole, Bill Roth, Fred Thompson, Spencer Abraham, Kay Bailey Hutchison, Jon Kyl, Chuck Grassley, Craig Thomas, Orrin Hatch, Larry E. Craig, Mitch McConnell, Conrad Burns, Bob Smith, Jesse Helms, Jim Inhofe, Judd Gregg.

CALL OF THE ROLL

The PRESIDING OFFICER. Under the previous order, the mandatory quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on amendment No. 1487 to S. 343, the regulatory reform bill, shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Arizona [Mr. MCCAIN], and the Senator from South Dakota [Mr. PRESSLER], are necessarily absent.

Mr. FORD. I announce that the Senator from Alabama [Mr. HEFLIN] and the Senator from Nebraska [Mr. KERREY], are necessarily absent.

The PRESIDING OFFICER (Mr. SANTORUM). Are there other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 48, nays 46, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—48

Abraham	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bond	Gramm	Nickles
Breaux	Grams	Packwood
Brown	Grassley	Pell
Burns	Gregg	Roth
Campbell	Hatch	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simpson
Coverdell	Inhofe	Smith
Craig	Johnston	Snowe
D'Amato	Kassebaum	Stevens
DeWine	Kyl	Thomas
Dole	Lott	Thompson
Domenici	Lugar	Thurmond
Faircloth	Mack	Warner

NAYS—46

Akaka	Feingold	Lieberman
Baucus	Feinstein	Mikulski
Biden	Ford	Moseley-Braun
Bingaman	Glenn	Moynihan
Boxer	Graham	Murray
Bradley	Harkin	Nunn
Bryan	Hatfield	Pryor
Bumpers	Hollings	Reid
Byrd	Inouye	Robb
Chafee	Jeffords	Rockefeller
Cohen	Kennedy	Sarbanes
Conrad	Kerry	Simon
Daschle	Kohl	Specter
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	
Exon	Levin	

NOT VOTING—6

Bennett	Kempthorne	McCain
Heflin	Kerrey	Pressler

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 46. Three-fifths of those duly chosen and sworn not having voted in the affirmative, the motion is rejected.

EXPLANATION OF ABSENCE

Mr. DOLE. Mr. President, the distinguished Senator from South Dakota, Senator PRESSLER, was necessarily absent during the cloture vote on the Dole-Johnston substitute amendment to S. 343, the regulatory reform bill.

Senator PRESSLER was on his way back to Washington from Sioux Falls, SD, but has experienced a number of flight delays due to mechanical difficulties and weather surveillance. Had Senator PRESSLER been here for the vote, he would have voted to invoke cloture.

(At the request of Mr. DOLE, the following statements were ordered to be printed in the RECORD.)

EXPLANATION OF ABSENCE

● Mr. PRESSLER. Mr. President, I was necessarily absent during rollcall vote No. 309 on the motion to invoke cloture on the Dole-Johnston substitute amendment to S. 343, the comprehensive regulatory reform bill. Had I been present for the vote, I would have voted in the affirmative.

I was unable to be here for the vote due to a number of travel problems that occurred on my flights from Sioux Falls to Washington, DC. Specifically, the aircraft that was to have taken me from Sioux Falls to Minneapolis was kept on the ground due to mechanical problems. The delay, in fact, forced me to take a later flight on another plane. I was further delayed at Minneapolis due to weather surveillance. I regret this series of flight delays prevented me from being present during the cloture vote earlier this evening.●

● Mr. KEMPTHORNE. Mr. President, I rise today to explain my absence from the floor during Senate vote No. 309 to invoke cloture on S. 343. I was necessarily detained on my return flight to Washington, DC, due to severe weather conditions causing flight delays. Had I been present for vote No. 309, I would have voted ''aye.''●

Mr. WARNER. Mr. President, as an original cosponsor of Majority Leader DOLE's regulatory reform package, I am delighted to have this opportunity to discuss the many benefits to be gained from its enactment. For perhaps the first time, we are confronting the astoundingly sensible idea that the regulations we impose at the Federal level should reflect risk-assessment and cost-benefit analyses. These important tools will ensure that limited dollars are spent on solving our most serious problems and in turn will return the greatest results.

Throughout this debate, we have been treated to a barrage of rhetoric from naysayers, the opponents of common-sense regulating. Those in favor of realistic balance have been portrayed as coldhearted calculators determined to destroy the environment, eradicate the safe workplace, and jeopardize the health of every American.

Mr. President, that simply is not true.

Regulations imposed by the Federal Government should bear a direct relationship to the potential risk to public health, safety, and the environment. They should also reflect a significant benefit for the costs incurred.

Those dual considerations form the centerpiece of the Dole-Johnson substitute.

The measure directs Federal agencies to conduct a cost-benefit analysis for major regulations, defined as having a gross annual economic impact of $50 million in reasonably quantifiable direct and indirect costs. Where appropriate, standardized risk assessments reflecting the best available science also would be conducted, with public participation and peer review. Since many speakers have preceded me, I will not belabor the specific provisions of this package.

Earlier this year, the Environment and Public Works Committee, on which I have served for 9 years, held a hearing on the impact of regulatory reform